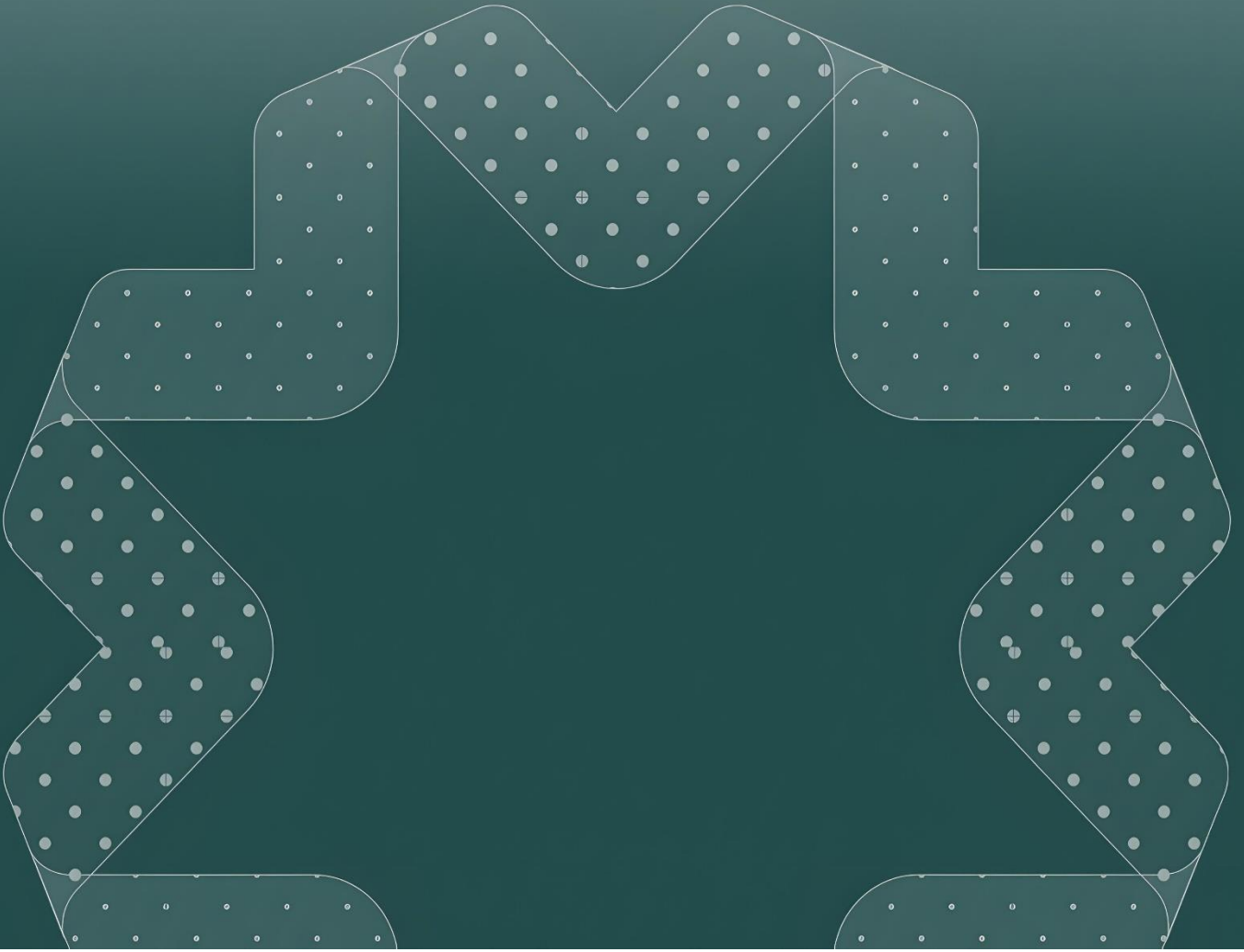




الأمانة العامة للجان الزكوية والضريبية والجمركية
General Secretariat of Zakat, Tax and Customs Committees

Tax Committees Decisions for 2023 AD Excise Tax





الأمانة العامة للجان الزكوية والضريبية والجمركية
General Secretariat of Zakat, Tax and Customs Committees



**Tax Committees Decisions for 2023 AD
Excise Tax**



الأمانة العامة للجان الزكوية والضريبية والجمركية
General Secretariat of Zakat, Tax and Customs Committees

Tax Committees Decisions for 2023 AD
Excise Tax



In the Name of Allah, Most
Gracious, Most Merciful

List of Decisions

Introduction	10
Message of His Excellency, Secretary General of Zakat, Tax and Customs Committees	11
Work Methodology:	12
Excise Tax - Tax Stamps - Commercial Fraud by Supplier - Ignorance of Law - Plaintiff Case Dismissal.....	13
Excise Tax - Final Reassessment of Tax Period - Excise Goods Differences - Permanent Loss of Goods - Late Payment Fine - Limitation.....	16
Excise Tax - Late Payment Fine - Re-assessment of Tax Periods - Nature of Late Payment Fine.....	23
Excise Tax - Prescription- Final Reassessment of Tax Period - Tax Differences - Late Payment Fine.....	29
Excise Goods Tax - Final Reassessment of Tax period - Late Payment Fine - Tax Differences.....	33
Excise Tax - Excise Tax Differences - late Payment Fine - Initial Assessment - Legal Period - If a Matter Ceases to Exist, That Which is Incidental to it Shall Also Cease to Exist... 37	
Excise Tax - Late Payment Fine - Imposing Late Payment Fines on Notification Date of Payment Invoice Numbers - Tax Assessment - Cancellation of Defendant Decision.....	43
Excise Tax - Tax Reassessment - Sweetened Beverages - Items Not Subject to Excise Tax - Medical/Nutritional Medical Products - Late Payment Fine - Illegality of Calculating Late Payment Fine.....	46
Excise Tax - Tax Reassessment - Standard Prices - Calculation of Excise Tax on Products - Late Payment Fine - "Related Matters Shall Have the Same Force and Effect" - Revoking of Defendant Decision.....	50
Excise Tax - Tax Reassessment - Sweetened Beverages - Late Payment Fine - "Related Matters Shall Have the Same Force and Effect".....	53
Excise Tax - Tax Reassessment - Statutory Period - Prescription - Mechanism for Calculating Tax Differences - Late Payment Fine - "Related Matters Shall Have the Same Force and Effect".	57
Excise Tax - Tax Reassessment - Tax Differences - Late Payment Fine - Fine for Failure to Provide Information Requested by ZATCA.....	60
Excise tax - Refund of tax paid on goods transported and exported - Refund application - Ignorance of law is no excuse - Late payment fine- Invalidity of late payment fine calculation.....	64
Excise tax - Tax reassessment - Tax differences - Final consumer selling price beyond the control of the producer or importer - Late payment fine - "The resulting occurrence shall take the same effect".	68
Excise tax - Tax reassessment - Statutory period - Challenged decision cannot be disputed for being time-barred - Customs clearance- Mechanism for calculating tax differences - Late payment fine - "the resulting occurrence shall take the same effect".....	72

Excise tax - Tax reassessment - Statutory period - Challenged decision cannot be disputed for being time-barred - Tax differences- Striking off the commercial register - Closing TIN - Late payment fine - “the resulting occurrence shall take the same effect”.....	77
Excise Tax - Tax Reassessment - Adjustment of Excise Tax Prices - Disclosed Price Discrepancy - Standard Prices - Determination of Price for Final Consumer beyond Producer or Importer Control - Late Payment Fine.	81
Excise Tax - Tax Reassessment- Notifying Taxpayer in Writing - Standard Price- Late Payment Fine-”resulting occurrence shall take the same effect“- Defendant Decision Cancellation.....	85
Excise Goods Tax – Tax Reassessment – Statutory Period – Late Payment Fine – Irregularity of Late Payment Fine Calculation.....	88
Excise Goods Tax – Tax Reassessment – Clearance of Items – Late Payment Fine – Tax Differences – Irregularity of Late Payment Fine Calculation.....	92
Excise Goods Tax – Reassessment of Excise Goods Tax - Calculation of the percentage prescribed by law - Failure to pay the tax due during the period prescribed by law - Late Payment fine - Reject Plaintiff case.....	96
Excise Goods Tax – Reassessment of Excise Goods Tax - Calculating Excise Goods Tax on Certain Goods Not Subject to Excise Goods Tax - Taxable Items - Late Payment Fine.	100
Excise Goods Tax - Excise Goods Tax Value Reassessment - Late Payment Fine - Payment of Due Tax Based on Cost Price of Imported Products - Annulment of Defendant Decision.....	104
Excise Tax – Reassessment of the Tax Period – Late Payment Fine – Sugar Free – Free from Natural or Artificial Sweeteners – The Product Subject to Dispute does not fall under 'Sweetened Beverages' that are subject to Excise Tax.	108
Excise Tax – Reassessment of the Tax Period – Regulatory Period – Tax Differences – Clearance of Plaintiff Goods from Customs – ZATCA Notification Failure to Include the Grounds Used in Calculating the Amount of Tax Due on the Taxpayer – Annulment of Defendant Decision.....	115
Excise Tax - Storage Warehouses - Sugar Existence - Natural or Concentrated Sweeteners - Fruit Juice.....	120
Excise Tax – Tax Differences – Late Payment Fine– Tax Periods – Sweetened Drinks– The product does not meet the Ministerial Committee’s definition of Sweetened Drinks– The standard prices were not clear or known enough to determine the tax base – The Plaintiff paid the tax according to the prices estimated by customs – Cancellation of the Defendant’s decision..	125
Excise Tax - Tax Differences - Final Assessment Notice for the Tax Period - Mocha Chocolate Powder - White Mocha Chocolate Syrup - Late Payment Fine - Cancellation of the Defendant’s Decision..	133
Appeal – Excise Goods Tax – Cancellation of tax differences for the validity of the tax return and the lack of clarity of the basis of the assessment - Standard prices - Determination of the price of the tax base- Lack of clarity of the basis on which the assessment is based - Disclosure of the tax in accordance with customs data - Excise tax	

differences - Acceptance of appeal and cancellation of the decision of Appeals Chamber and the decision of ZATCA.....	138
Appeal – Excise Goods Tax – Non-production or import of excise taxable goods - Description of the product subject of the dispute as a frozen fruit-flavored dessert - Late payment fine - Good is intended to be consumed as food, not a beverage - Accept appeal and cancel Appeals Chamber decision.....	141
Appeal – Excise Goods Tax - Cancellation of tax differences for failure to notify Appellant of the correct prices - Standard price - Indicative price list - ZATCA approved prices - Determination of profit margin according to cost - Correction of prices during the clearance - Rejection of appeal and cancellation of the decision of Appeals Chamber.	144
Appeal - Excise Tax - Field Inspection - Existence of Excise Goods Such as Sweetened Beverages Subject to Excise Tax - Inaccuracy of Product Description Certificate Submitted by Manufacturer - Certificate from an Accredited Laboratory - Late Payment Fine- Error in Declaration.	147
Appeal – excise goods tax - late payment fine - customs clearance - undeclared standard prices for taxpayer - determining the price of the tax base - comparing the standard price and the retail price - disclosing the tax according to customs specifications - accept appeal and cancel the decision of Appeals Chamber and the decision ZATCA.	150
Appeal - Excise Goods Tax - Tax differences resulting from entering quantities into customs that conflict with the approved unit of measurement - Accept appeal in form and reject it on merits.....	153
Appeal - Excise Goods Tax - ZATCA proving validity of its informing of taxpayer with conclusive evidence - Taxpayer acknowledgment of receiving all notifications sent by ZATCA - Accept appeal in form and reject it on merits and uphold Department decision.	156
Appeal – Excise Goods Tax – Reassessment of Excise Invoice - Product Price - Reject the appeal of taxpayer and uphold Department decision.	159



Introduction

Praise be to Allah, Lord of Worlds. May His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

Courts and judicial commissions efforts, rulings and decisions constitute an invaluable jurisprudential and judicial wealth that must be carefully preserved. In the context of commercial and industrial revolution that Kingdom of Saudi Arabia is experiencing under Saudi Vision 2030, various zakat and tax controversies have arisen, affecting many people. Therefore, and based on General Secretariat of Zakat, Tax and Customs Committees social responsibility, Secretariat has sought to create a solid foundation and reference for committee members, taxpayers and interested parties by publishing final decisions issued by tax committees in 2023. This contributes to effective settlement of zakat and tax disputes, and limits time taken for deciding upon cases. These records clarify decisions reached by committees, which would have a positive impact on shortening litigation period, saving efforts for case examiner, fulfilling principle of transparency pursued by General Secretariat, and introducing practical aspects to bodies concerned with legal research, particularly academic, training and other relevant bodies.

We ask Allah Almighty that this book be a sincere endeavor for the sake of Allah, to reward our efforts and guide us to goodness. He is indeed the most generous.



Message of His Excellency, Secretary General of Zakat, Tax and Customs Committees

Praise be to Allah almighty,

General Secretariat of Zakat, Tax and Customs Committees vision and values has been committed to excel in resolving zakat, tax and customs disputes, adopt innovative and effective approaches, enhance transparency and neutrality, develop cooperation between parties of zakat, tax and customs ecosystem, and play an effective role in raising efficiency of legal consideration. This is intended to enable zakat, tax and customs committees to successfully resolve disputes before them, and provide support and assistance to committees at all stages by conducting studies and research, as well as also helping taxpayers by clarifying laws, decisions and judicial precedents, and updating them periodically.

General Secretariat has attached special importance to final decisions issued by committees, being the final product of well-established judicial jurisprudence, and can be developed and updated to reflect changes. Recording such precedents help decide on similar disputes heard by judicial committees.

Knowing these decisions also eliminate disagreements and disputes and supports litigants position before committees. This effort includes the project of classification and categorization of final decisions issued by tax committees.

This priceless value of appellate decisions necessitated that they be assembled and published for public to achieve principle of transparency, consolidate existing efforts, and enrich scientific arena to be a fertile field for scholars, specialists and research centers.

Publication of these final decisions is a noble effort by General Secretariat, which comes in line with its mandate, and demonstrates its resolute commitment to promoting justice according to support and directives of our blessed leadership, with its unlimited support for the legislative and regulatory ecosystem.

In conclusion, I would like to extend my sincere gratitude to His Royal Highness Custodian of the Two Holy Mosques, King Salman bin Abdulaziz, and his Crown Prince, His Royal Highness Prince Mohammed bin Salman bin Abdulaziz, Prime Minister, may Allah protect them, for their generous patronage and support for judicial activities in various fields. I also extend my sincere recognition to employees of General Secretariat for their distinguished efforts in issuing this product, which I hope will achieve its goals and be a qualitative addition to the legal field.

Secretary General
Abdullah bin Abdulrahman Al-Suhaibani



Work Methodology:

General Secretariat was keen to select and publish comprehensive judgments to achieve desired benefit. Given the importance of appropriate description of case before committees and its impact on inference and reaching the decision, which is the outcome sought by parties to lawsuit, and given the diverse facts and circumstances of tax and zakat cases, there has been a need to sort and classify committees' decisions for easy reference for litigants and interested parties.

Based on General Secretariat of Zakat, Tax and Customs Committees role in adopting and applying principles of continuous improvement and development in management of zakat, tax and customs disputes, to enable conclusive settlement of these disputes, care and attention were given to classifying and publishing final decisions issued by Committees. Accordingly, was developed to come up with an easy and accessible product. Work was divided into several stages according to the following:

- Inventorying final decisions made by zakat, tax and customs committees in 2023 and those issued in late 2022 but were not included in 2022 decisions record.
- Setting keywords to facilitate search process.
- Developing abstract of decision outlining key points.
- Listing evidence on which Department relied for delivering its judgment.
- Classifying decisions objectively as appropriate and placing each decision under its relevant classification.
- Indicating name of Department delivering decision, decision number, case number, decision issue date, and assessment period.
- Ensuring anonymity of litigants and other involved parties without affecting decision.
- Checking decisions to ensure they are free from any linguistic and spelling errors.
- Decisions classification and indexing was based on Law, meaning that decisions were classified as per order of corresponding topic in within law.
- Excluding replicate decisions methodology was adopted, as replication criterion is when clauses of decisions, requests of parties and rulings are similar, even if parties are not the same.
- Adhering to exact text of decision including its facts, grounds and operative part, without any addition or amendment except for spelling and grammatical errors.



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2022-135)

Delivered in Case No. (E-2021-83199)

Keywords:

Excise Tax - Tax Stamps - Commercial Fraud by Supplier - Ignorance of Law - Plaintiff Case Dismissal.

Abstract:

Plaintiff filed a case seeking cancellation of ZATCA decision regarding imposition of a fine for absence of tax stamps. Plaintiff based its objection on the fact that it did not deny violation, but rather there was commercial fraud by Supplier. However, Plaintiff failed to provide supporting documents such as Supplier invoices and name, and only requested a lenient penalty due to ignorance of law. On its part, ZATCA maintained its original position outlined in its Reply included in case file. Department found that responsibility for placing and activating tax stamps on excise goods lies with entity offering or intending to offer excise goods for consumption in Kingdom. Given that Plaintiff attorney plea of ignorance of law is inadmissible based on the principle that ignorance of law is no excuse, Department ruled to: accept case in form; dismiss Plaintiff case; and consider its decision as final and enforceable.



Documents:

- Article (9.3) of [Implementing Regulations of Excise Tax Law](https://ncar.gov.sa/document-details/eyJpdii6IkhReS8rcjVraHAxaGR0dTNWaE5rZWc9PSIsInZhbHVlIjoieEhLcklTQlFCZisvMHltTkdfFaFMwUT09IiwibWFjIjoieMmViOWY4NWRlZlTY0YzIwMDRmMTc5OGI5MmU5N2VIYzlkYmIxN2ZhNGRlNzZlMzU0ZThiOTAxOWM3ZTIyNWFiZSIzInRhZyI6Ij9) issued pursuant to ZATCA Board of Directors Decision No. (2-3-19) dated 10/09/1440 AH. <https://ncar.gov.sa/document-details/eyJpdii6IkhReS8rcjVraHAxaGR0dTNWaE5rZWc9PSIsInZhbHVlIjoieEhLcklTQlFCZisvMHltTkdfFaFMwUT09IiwibWFjIjoieMmViOWY4NWRlZlTY0YzIwMDRmMTc5OGI5MmU5N2VIYzlkYmIxN2ZhNGRlNzZlMzU0ZThiOTAxOWM3ZTIyNWFiZSIzInRhZyI6Ij9>

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday 24/08/2022 AD, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh City, convened pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH.

Facts of this case are as follows: Mr./....., holding National ID No. (...), in its capacity as Plaintiff attorney, holding National ID No. (...), in its capacity as legal representative of Company, a one-person Company, with C.R. No. (...). representing Plaintiff under Power of Attorney No. submitted a statement of claims objecting ZATCA decision regarding imposition of a fine for absence of tax stamps No. (...) dated 06/10/2021 AD, requesting cancellation of Defendant decision.

When presenting statement of claims to Defendant, it submitted a Reply summarizing the following points: On merits: Having reviewed Plaintiff statement of claims, it was found that its claims related to a field detection fine for absence of tax stamps on some of excise goods that Plaintiff sells. Accordingly, ZATCA hereby replies as follows: 1. ZATCA representatives visited Plaintiff site on a field campaign and examined products that it sells to ensure that Paragraph 1 of Article of Excise Tax Law and its Implementing Regulations is complied with. After inspection, a violation is detected according to Article 9 of Implementing Regulations of Excise Tax Law, which states: “Valid tax stamps shall be affixed to designated excise goods and shall be activated prior to offering them for consumption in Kingdom...”. It was found that products (cigarettes) that were seized from Plaintiff did not bear tax stamps (attached). 2. Having verified Plaintiff violation of Excise Tax Law and its Implementing Regulations as stated above, ZATCA fined Plaintiff an amount of SAR 10,000 based on Article 23.3 of Excise Tax Law, which states: “Anyone who violates any other provision of the Law or Regulations shall be penalized with a fine not exceeding SAR 50,000 (fifty thousand riyals). Third: Requests: Based on the above, ZATCA requests Honorable Committee to: 1. Dismiss case for grounds stated above, and alternatively uphold ZATCA decision in dispute, while reserving the right to provide further responses and clarifications before pleadings closure.

On Wednesday, 24/08/2022, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh convened its first session via video conference as per procedures for remote video proceedings at exactly 05:20 PM, based on Article 15.2 of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No.: (26040), dated 21/04/1441 AH to consider case filed by Plaintiff against Defendant. Having called parties to case, Plaintiff attorney, a Saudi national, holding National ID No. (...), representing Plaintiff under Power of Attorney No. (...) declared his appearance. Mr., a Saudi national, holding National ID No. also declared his appearance as attorney for Defendant, under authorization letter No. (...) dated .../08/1442 AH issued by Deputy Governor for Legal Affairs. When asked about his client claims, Plaintiff attorney maintained his original statements contained in statement of claims submitted to



General Secretariat of Zakat, Tax and Customs Committees, adding that he sought a lenient penalty based on its client ignorance of law. When asked about his Reply, Defendant attorney maintained his original statements contained in its Reply included in case file. Then, when asked if either of them had any other statements, both parties answered that they hadn't. After that, Department decided to close pleading and adjourn session for deliberation before issuing decision.

Grounds:

Having reviewed Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH , as amended, and its Implementing Regulations issued pursuant to the Minister of Finance Decision No. (1535) of 11/06/1425 AH , as amended, and based on Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH , as amended, and its Implementing Regulations issued by Board Decision No. (2-3-19) dated 10/09/1440 AH of General Authority for Zakat and Tax (currently ZATCA), and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. 26040 dated 21/04/1441 H, as well as other relevant laws and regulations.

In Form: Since Plaintiff filed its case to request that Defendant decision be canceled based on Excise Tax Law and its Implementing Regulations, and since this dispute is a tax dispute, it then falls within the jurisdiction of the Committee for Resolution of Excise Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH, and since the case was filed by a person with capacity, and within the period prescribed by law, it is therefore accepted in form.

On Merits: Department reviewed case files, including requests, defenses and pleadings submitted by parties thereto, and since dispute centers on Plaintiff objection to Defendant decisions regarding imposition of fine on Plaintiff for not affixing tax stamps; Plaintiff did not deny its violation, but rather indicated the existence of commercial fraud by Supplier, with its failure to submit invoices for the purchases purchased from that Supplier or its name; and Plaintiff attorney requested that a warning be sufficient as a penalty since it is ignorant of the law. Department has concluded that according to Article 9.3 of Implementing Regulations of Excise Tax Law, which clarified that the person responsible for affixing tax stamps to the designated excise goods and activating them is the registrar who offers or will offer those goods for consumption in Kingdom, and since the defense entered by Plaintiff attorney that Plaintiff is ignorant of law is considered invalid and inadmissible defense as the ignorance of law is no excuse, therefore, Department finds that Plaintiff violation is established.

For the aforementioned grounds, Department unanimously decided as follows:

Decision:

First: To Accept case in form.

Second: To dismiss Plaintiff case.

This decision was delivered in presence of Parties as a final and enforceable under Tax Dispute and Violation Committee Procedures. Date of uploading decision to electronic system of General Secretariat of Zakat, Tax and Customs Committees shall be deemed the date of decision delivery.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.

Judgment has become final because disputed amount is less than SAR 50,000 (fifty thousand riyals) pursuant to Article 33.1 of Tax Dispute and Violation Committee Procedures of Zakat, Tax and Customs Committees.



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2022-178)
Delivered in Case No. (E-75611-2021)

Keywords:

Excise Tax - Final Reassessment of Tax Period - Excise Goods Differences - Permanent Loss of Goods - Late Payment Fine - Limitation.

Abstract:

Plaintiff filed a case seeking cancellation of Defendant decision regarding final reassessment of excise taxes for the fourth, fifth and sixth periods of 2017; first and sixth periods of 2018; and third period of 2020, including associated fines. Plaintiff based its objection on the fact that it was made to the two decisions in from within statutory timeframe. However, ZATCA argued that, in terms of formal aspect, Plaintiff failed to submit its objection to ZATCA within statutory timeframe; therefore, ZATCA decision cannot be disputed for being time-barred. ZATCA requested case dismissal on formal grounds. As for excise tax differences, Department determined the following: 1. Sale Price Differences: Defendant did not provide any proof for the occurrence of any of the three cases specified in Article 17.1 of Implementing Regulations of Excise Tax Law. 2. Permanent Loss of Goods: Plaintiff claim of permanent loss of goods through theft is valid and acceptable. 3. Late Payment Fine: Plaintiff objected to Defendant decision to charge a late payment fine resulting from reassessment of disputed tax periods. Since Department decision in the first and second items led to accepting Plaintiff case and abolishing canceling Defendant (ZATCA) decision, and since late payment fine resulted from that, the resulting occurrence shall take the same effect. Hence, Department ruled the following: Cancel Defendant decision regarding differences in excise goods, permanent loss of goods, and late payment fine. This decision shall be deemed final and enforceable.

Documents:

- Articles (17.1, 3, 4), and (5.5) of Implementing Regulations of Excise Tax Law issued by ZATCA Board decision no. (2-3-19) of 10/09/1440 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday 09/10/2022 AD, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh city, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended and Royal Order No. (13957) dated 26/02/1444 AH, convened a session via video conferences as per the remote video litigation procedures to consider above-mentioned case. Since the case fulfilled the established regulatory requirements, it was filed with General Secretariat of Zakat, Tax and Customs Committees under the above number on 14/10/2021 AD.

Facts of this case are as follows: Mr./....., holding National ID No. (...), in its capacity as owner of Company, with C.R. No. (...), submitted statement of claims objecting Defendant



(ZATCA) decisions regarding final reassessment of fourth, fifth and sixth tax periods of 2017; first and sixth periods of 2018, and third period of 2020, including associated fines, seeking cancellation of Defendant decision.

When presenting statement of claims to Defendant, it submitted a Reply summarizing the following points: "In Form: We clarify that Plaintiff did not file its objection to ZATCA within statutory timeframe specified in Tax Dispute and Violation Committee Procedures. Article (2) of Tax Dispute and Violation Committee Procedures stipulates that: "Any person against whom a decision has been issued by ZATCA may file an objection before it within sixty (60) days from date of notification thereof...". Since ZATCA decisions were issued on 21/04/2021 AD, and Plaintiff submitted his objections on 23/06/2021 AD and 27/06/2021 AD, then objections are submitted after the 60-day period. Accordingly, contested decision becomes indisputable due to lapse of period prescribed for objection, as per Article 3.1 of Tax Dispute and Violation Committee Procedures. Second: Requests: In light of the above, ZATCA requests Honorable Committee to dismiss case in form based on the grounds explained above. ZATCA reserves the right to provide further responses and clarifications before pleadings closure.

On Wednesday, 24/08/2022, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh city convened its first session via video conference in accordance with remote video litigation procedures at 04:00 PM, based on Article 15.2 of Tax Dispute and Violation Committee Procedures issued by Royal Order No.: (26040), dated 21/04/1441 AH to consider the case filed by Plaintiff against Defendant. When Parties to case were called, Mr....., anational, holding National ID No..... appeared in its own capacity. Mr....., anational, holding National ID No..... appeared as representative of Defendant by virtue of authorization No. dated ... issued by Deputy Governor for Legal Affairs. When asked about his claims, Plaintiff maintained his original claims included in his statement of claims submitted to General Secretariat. Regarding formal aspect, he added that the two decisions were delivered on 29/04/2021 AD, and his objection to them before Defendant was on 22/06/2021 AD, which was dismissed on 20/09/2021 AD. Plaintiff then filed his case to Secretariat on 14/10/2021 AD. When asked the same question, Defendant representative maintained his original answers included in his reply in case file, adding that the two decisions delivered on 21/04/2021 AD, and Plaintiff objected to them on 24/06/2021 AD and 26/06/2021 AD. when asked if either of them had any other statements, both parties answered that they hadn't. Accordingly, Department decided to adjourn case until Plaintiff submits a copy of decisions delivered against him on the dates he claims, and Defendant representative submits proof for his arguments regarding the formal aspect. Department set a deadline for these submissions one week before the next session, scheduled for Sunday 18/09/2022 AD, at 04:00 PM. Defendant then submitted a Reply including the following: "1. Decision is presumed to be valid and sound, and whoever claims otherwise shall provide proof supporting his claims. 2. Based on Article 17.1 of Regulations, which stipulates that: "ZATCA shall calculate Tax Due amount on Excise Goods, in accordance with Regulations provisions; if taxpayer: B) fails to comply with conditions to file an Excise Tax Return or submitted an incorrect Excise Tax Return", and paragraph (2) of same article "For the purposes of this Article, an incorrect import declaration or excise tax return shall mean any import declaration or excise tax return which has led to an incorrect calculation of the tax due", it was found that there were excise tax differences that were not paid upon import. The excise tax was not imposed based on the retail price of goods, which violates Implementing Regulations of Excise Tax Law, and the provisions of the agreement. Definition of "Tax Base" in Article 1 of Regulations is "value of Excise Good on which Tax is imposed, equals to the retail sales price determined by the importer or producer, or the standard price agreed on these goods in accordance with the Agreement, whichever is higher; exclusive of Tax due and VAT". Also, Article 8.3 of Implementing Regulations of Excise Tax Law stipulates "If no or insufficient



evidence is provided in accordance with the second (2) paragraph of this Article, or if Authority or Saudi Customs has reasonable doubt with respect to the validity of the declared retail sales price, ZATCA or Saudi Customs shall have the right to reject such prices and determine the correct price to be used for calculating the Tax Due, in accordance with the provisions of Regulations.” Given that Plaintiff did not abide by conditions for submitting excise tax declaration and submitted an invalid declaration, which resulted in an incorrect calculation of excise tax - as tax was calculated on carton and not on retail price "single unit" - this is considered a violation of Article (17) of Implementing Regulations of Excise Tax Law, and accordingly, ZATCA maintain validity of its decision to impose excise tax. Based on the above, ZATCA requests Honorable Committee to dismiss the case for grounds stated above and to uphold ZATCA decision, and ZATCA reserves the right to provide further responses and clarifications until pleadings closing.

On Sunday, 18/09/2022 AD, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh city held its second session via video conference in accordance with the procedures for remote video litigation at 5:45 PM according to Article 15.2 of Tax Dispute and Violation Committee Procedures issued by Royal Order No.: (26040), dated 21/04/1441 AH to consider the case filed by Plaintiff against Defendant. When Parties to case were called, (... Mr....., anational, holding National ID No..... appeared in its own capacity. (... Mr....., anational, holding National ID No..... appeared as representative of Defendant by virtue of authorization No. dated ... issued by Deputy Governor for Legal Affairs.

At beginning of session, Defendant representative requested that formal aspects of case be bypassed, due to validity of Plaintiff claim that the two decisions were filed within statutory timeframe. Defendant requested proceeding directly to merits of case, citing the Reply submitted during that session. When asked to reply to Defendant statements, Plaintiff said that: He was not able to review Defendant Reply, as it was submitted during the session. Plaintiff subsequently requested Department to allow him additional time to reply. Accordingly, Department decided to adjourn case to next session, scheduled on Sunday 09/10/2022 AD at 04:00 PM, provided that Plaintiff submits his reply one week before session date.

Plaintiff submitted a reply stating the following: "With reference to case filed before Your Honorable Committee and Replication submitted by Defendant, which contained several baseless and untrue arguments, Defendant defenses are as follows: 1. Decision is presumed to be valid and sound, and whoever claims otherwise shall provide proof supporting his claims. 2. Defendant has the right to recalculate tax amount in accordance with legal texts. We (Plaintiff) maintain our objections to Defendant decision, and to save your Honor precious time, we summarize our response to Defendant defenses as follows: First: As for Defendant defense that “Decision is presumed to be valid and sound, and whoever claims otherwise shall provide proof supporting his claims.”, we reply that” First: It is Defendant who assumes the burden of proof. Defendant is an “administrative body” as per Common Customs Law of GCC States (“Common Customs Law”) endorsed by Royal Decree No. (M/41) dated 03/11/1423 AH, and its will is binding upon Plaintiff. Hence, its decisions are deemed administrative decisions that must be based on a valid and lawful ground. It is established that administrative decisions beyond purview of ordinary courts; that they have no powers to cancel, interpret, amend, or compensate. Administrative bodies exercise their lawful authority to create specific legal positions, as long as such decisions are legally valid and serve the public interest. But, if such decision is marred by invalidating defect, it then becomes an ordinary incident rather than an administrative decision and falls with jurisdiction of ordinary courts with general jurisdiction to consider all disputes. Second: Plaintiff has submitted to ZATCA all invoices and documents proving his procedures along with all official documents proving validity of those procedures. Defendant has accepted those documents and adopted them for



assessing tax. These documents have never been disputed by ZATCA upon inspection of goods and assessing tax. Therefore, there were no defect or error in procedures as long as Defendant approved and acknowledged validity of documents. Third: Plaintiff paid tax due as estimated by ZATCA, and received a receipt of his payment as per Article (64) of Common Customs Law, and therefore Defendant has exhausted its authority to issue or amend decision. Fourth: Having reviewed necessary legal procedures, goods were offered in local markets in accordance with Article (63) of Common Customs Law. Then, Defendant cannot retract its assessment, as goods already entered local markets and became subject to another tax.”

Second: Defendant relied on Article 17.1 claiming that Plaintiff did not comply with requirement of submitting excise tax declaration, and that he submitted an invalid declaration, which resulted in an incorrect calculation of excise tax. Based on Article 17.6 of Chapter 9 of Implementing Regulations of Excise Tax, tax assessment and disclosure are as follows: ZATCA shall notify taxpayer of tax due amount in writing. This written notification shall include calculation basis used. This provision proves ZATCA fault in not disclosing and claiming the due amounts from Plaintiff according to the email attached by ZATCA on 29/04/2021 AD. First: According to Article 20 of Basic Law of Governance promulgated by Decree No. (A/90) of 27/08/1412 AH, there is an established rule that no tax shall be imposed except by a law. Article 11 of Common Customs Law also states: “Customs taxes “duties” are levied, amended, and abandoned by legal instrument applicable in each Member State...”. Accordingly, legislation related to taxes is mandatory and may not be violated or disregarded. Moreover, basis for imposing tax - as a general principle - is Law, not Implementing Regulations. Even if Plaintiff submitted an invalid document, Defendant should have addressed that irregularity at the time of inspection by virtue of discretionary power to evaluate goods, estimate tax and issue decision accordingly. So, once decision is issued, it shall have its legal effect and Plaintiff acquires a specific legal position, so that that discretionary power does not become a sword hanging over those dealing with it. Second: Tax value is associated with date of incident giving rise to that tax, that is actual inspection of imported goods (Article (52) of Common Tax Law). Defendant estimation of tax has absolute discretionary authority only at time of inspection to address any omission or deficiency on its part. This power vested in Defendant by law entitles it to deal with all parties inside and outside Kingdom to verify real value of goods, at time of inspection, in order to estimate tax payable on such goods based on their actual value at date of registration of customs declaration (Article (57) of Common Customs Law). To achieve this, legislator has required goods owner to submit original invoice certified by issuing entity or competent official body accredited by Customs Authority. If Defendant had any observation at time of inspection, it could have demanded to be provided with documents, contracts, correspondence, and other relevant files, rather than being restricted with document or invoices provided, even if they were certified and whether documents and other submissions are official or customary. Defendant shall have also the authority to stop inspection of goods and seize them in accordance with Article (58) of Common Customs Law, which states that: "If customs office cannot verify contents of customs declaration through inspection of the goods or documents submitted, it may suspend inspection and request necessary supporting documents." Third: Defendant failed to clarify standard price and its calculation basis: Your Honor, Defendant based its decision to charge differences on (standard prices), but didn't clarify the specific calculation method. On the other hand, since Defendant decision violated text of Article 11.4 of Implementing Regulations of Excise Tax Law, which obligated Defendant to have its written notification include the basis it used to calculate tax amount, and Defendant didn't clarify how those differences were calculated or the basis on which the tax amount was recalculated. Third: If there are amounts or differences payable by Plaintiff, how were those amounts estimated? and on what basis were they calculated? Kindly note that Article 4.2 of Implementing Regulations of Excise Tax Law stipulates “... The Tax Due shall be calculated based on the Tax Rate applicable at the time of



releasing of the Excise Good for consumption” and Plaintiff has paid the due tax in full according to the price approved in the customs and as per the purchase invoices. Fourth: Defendant decision to impose and collect tax has been arbitrary, resulting in disrupting Plaintiff financial position without a valid and lawful ground. So, on what basis were these differences calculated? This constitutes a violation of Article 11.4 of Implementing Regulations of Excise Tax Law, especially since Plaintiff has provided evidence of the retail price according to Article 8.1 of Implementing Regulations of Excise Tax Law. Fourth: With regard to the reliance on Article 8 of Implementing Regulations of Excise Tax Law, this would not validate Defendant decision, but it rather deems the decision null and void: 1. Plaintiff paid tax due according to established prices and valid documents. Customs Authority calculated value of tax according to Article 9.1 of Implementing Regulations and collected tax in full according to Article 12 of Implementing Regulations. If there were any other tax obligations or differences on goods, why were goods released without collecting additional taxes? 2. Cost of goods was calculated according to invoices issued by Supplier and price list is available at Customs to collect it in full. Had there been a change in tax value, Customs Authority should have been notified, which did not happen. Even if we assume that there was a change, invoices and documents prove the price at time of collection pursuant to Article 4.2 of Implementing Regulations. As such, and since Plaintiff has paid tax according to prices and Customs Authority assessment, Defendant shall have no right to claim any other amounts for any reason with regard to excise tax or any relevant differences, other than amount already paid according to invoices and documents. Otherwise, Defendant decision shall be deemed invalid. Third: As for Defendant statement about an error in calculating tax - calculated on per carton basis rather than unit price (retail price) - we respond as follows: Plaintiff followed all procedures from entry of goods into customs, through actual inspection, tax assessment, payment, and release of goods without any reservation from Defendant. Second: Tax assessment was made by Defendant as per valid official documents submitted by Plaintiff. Tax assessment was an acknowledgment of validity of those documents without reservation from ZATCA, which confirms that assessment was final and Defendant has no right to claim other amounts after levied amounts had been charged and paid. If documents are not valid as claimed by Defendant then it shall have the right to exercise its discretionary authority to evaluate, seize, or charge reasonable tax on goods, without releasing them or applying legal requirements rather than waiving them. Third: After issuance and enforcement of initial decision and following due procedures, ZATCA loses its right to reassess and reclaim tax. In view of the above, it is evident how arbitrary was ZATCA unlawful decision and its claim for differences without a valid legal ground. This is nonetheless contrary to reality and leads to damage and undue waste of Plaintiff money without any legal justification, and also contradicts principles of Sharia and its five rules, including preservation of money. This invalid decision also causes severe harm and damage to Plaintiff, which conflicts with Sharia rule of “No harm should be inflicted or reciprocated” and that “harm must be removed”. In addition, Supreme Court has established that in its decision No. (2/188) dated 25/02/1424 AH that respecting and protecting people money is a legal duty shared by all those responsible. Supreme Court also indicated in its decision No. (2/195) of 27/12/1411 AH that Sharia aims to prevent harm. It is worth noting that Plaintiff has completely ceased his importing activity and terminated employment of his employees due to arbitrary estimates that no one can afford. Requests: In light of the above, ... Company pleads with you to: 1. To Accept case in form. 2. Overturn Defendant decision. On Sunday, 09/10/2022, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh convened a session via video conference in accordance with the procedures for remote video litigation at 4:00 PM based on Article 15.2 of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No.: (26040), dated 21/04/1441 AH to consider the case filed by Plaintiff against Defendant. When Parties to case were called, (... Mr....., anational, holding National ID No..... appeared in its own capacity. (...



Mr....., anational, holding National ID No..... appeared as representative of Defendant by virtue of authorization No. dated ... issued by Deputy Governor for Legal Affairs. After hearing arguments from both parties, Department decided to close pleading and adjourn session for deliberation before issuing decision.

Grounds:

Having reviewed Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH , as amended, and its Implementing Regulations issued by Minister of Finance Decision No. (1535) of 11/06/1425 AH , as amended, Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH , as amended, Implementing Regulations of the Law issued by the Decision of Board of Directors of General Authority of Zakat and Income (currently ZATCA) No. (2-3-19) dated 10/09/1440 AH , as amended, and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant laws, regulations and decisions.

In Form: Plaintiff filed a case seeking cancellation of Defendant decision regarding final reassessment of fourth, fifth and sixth tax periods of 2017; first and sixth periods of 2018; and third period of 2020, including associated fines, based on Excise Tax Law and its Implementing Regulations, and since this dispute is a tax dispute, it then falls within the jurisdiction of the Committee for Resolution of Excise Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH, and since the case was filed by a person with capacity, and within the period prescribed by law, it is therefore accepted in form.

On Merits: Department reviewed case files, including requests, defenses and pleadings submitted by parties thereto, and since dispute centers on Plaintiff objection to Defendant decisions regarding final reassessment of fourth, fifth and sixth tax periods of 2017; first and sixth periods of 2018; and third period of 2020, including associated fines, Department hereby concludes as follows:

First: Excise Tax Differences: which includes the following:

1. Sale Price Differences: Case files did not include nor did Defendant submit any proof for the occurrence of any of the three cases specified by Article 17.1 of Implementing Regulations of Excise Tax Law, the occurrence of which would activate ZATCA authority to assess the tax due on selective goods. Moreover, Department found that ZATCA did not comply with the requirements dictated by paragraphs (3) and (4) of Article (17) as to notifying taxpayer by a written notice of the amount of the tax due, and that the notice includes the basis relied upon by ZATCA in calculating the amount of the tax due. Since the failure to comply with these requirements undermines the soundness of the decision and taxpayer ability to understand ZATCA assessment and consequently to exercise his right as a taxpayer to accept or object to the assessment; therefore, the tax assessment decision so delivered has to be canceled.

2. Permanent Loss of Goods: The Department found that the Plaintiff's claim of permanent loss of the goods to be valid, as his goods were stolen as per the police report attached which was issued bypolice, Report No....., dated corresponding to, and a final decision was issued by the Customs Appeal Committee in Dammam discharging the Plaintiff from a customs evasion case count, quashing the primary decision and ruling that the Appellant (Plaintiff in this case) is not guilty due to insufficient evidence. Furthermore, according to Article 5.5 of the Implementing Regulations of the Excise Tax Law which provides that: " The Excise Goods shall be considered released for consumption, and thus shall be taxable in the following cases:

5. The Total Damage or loss of Excise Goods placed under a Tax Suspension Arrangement, unless the Licensee can provide evidence that the damage or loss is caused by reasons beyond its control, under the following conditions and procedures:

a) The Licensee shall fill the form prescribed by the Authority for that purpose, which shall include at least the following information:



- 1) Tax warehouse license number of the Licensee.
- 2) Information related to the Total Damage or irreversible loss of Excise Goods.
- 3) Evidence confirming that the Total Damage or irreversible loss is attributed to reasons beyond the control of the Licensee.”

and since the Defendant did not provide the Department with documents that prove the validity of its action, making it impossible to know the grounds for taking its decision and charge the tax in question, and thus causing the Department to cancel the Defendant’s decision as to this item.

Second: Late Payment Fine: The Plaintiff objected to the Defendant’s decision to imposing a late payment fine resulting from the re-assessment of the disputed tax periods, and since the Department’s decided in the first and second items to accept the Plaintiff’s case and cancel the Defendant’s decision, and since the late payment fine is a consequence of that; therefore, it takes the same ruling. Therefore, the Department concludes to cancel Defendant’s decision as to this item.

For the aforementioned grounds, Department unanimously decided as follows:

Decision:

First: Cancel the Defendant’s decision regarding the selective goods differences.

Second: Cancel the Defendant’s decision regarding the permanent loss of goods.

Third: Cancel Defendant decision regarding the late payment fine.

This decision was issued in presence of both parties. Department set thirty (30) days from date for receiving copy of decision, and may extend delivery date for another (30) days. Parties hereto may request to appeal decision within thirty (30) days from the day following the date specified for its receipt. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.

Appeal Committee:

Appeal Committee ruled to uphold Department decision.



Adjudication Committee

First Department to Adjudicate Excise Goods Tax
Violations and Disputes in Riyadh**Decision No. (ER-2022-183)**
Delivered in Case No. (E-85482-2021)**Keywords:**

Excise Tax - Late Payment Fine - Re-assessment of Tax Periods - Nature of Late Payment Fine.

Abstract:

Plaintiff filed a case seeking cancellation of ZATCA decision regarding imposition of excise tax late payment fine for January and February 2021; March; April; May and June 2021 basing its claims on the following grounds: 1. Excise tax late payment fine for January and February 2021: On 21/09/2021, ZATCA sent an email to Plaintiff Company, including details of tax invoice numbers for January and February 2021, as well as late payment fine. Company clarified that it did not delay in responding to any of ZATCA requests, nor did it delay payment of tax due on, since it paid it the next day. 2. Excise tax late payment fine for March, April, May and June 2021: ZATCA sent an email to Plaintiff Company on 24/08/2021, including invoice numbers for March, April, May and June 2021. By chance, and without receiving any email or any correspondence from ZATCA, Company found late payment fines imposed on it for March, April, May and June 2021 appearing on Company account page on ZATCA website under "Unpaid Invoices". However, Company paid full amount of contested fines, while reserving the right to request a cash refund or deduction from taxes will fall due and payable after settlement of objection. ZATCA responded that its decisions have been issued after re-assessment of tax periods and amounts previously disclosed by Plaintiff, and a late payment fine was then imposed for the months following the tax period in issue. Department found that taxpayer has paid taxes imposed by Defendant according to a tax assessment within specified period, and that late payment fine is a means of pressuring taxpayer to fulfill its obligations after learning about them, not for disciplinary purposes. Department ruled to Cancel Defendant decision and Department decision shall be deemed final and enforceable.

Documents:

- Article (22) of [Excise Tax Law promulgated by Royal Decree No. \(M/86\) dated 27/08/1438 AH.](#)
- Articles (17) and (18.4) of [Implementing Regulations of Excise Tax Law promulgated by Decision No. \(2-3-19\) dated 10/09/1440 AH of ZATCA Board of Directors.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday 09/10/2022 AD, First Department to Adjudicate Excise Tax Violations and Disputes in Riyadh city, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (13957) dated



26/02/1444 AH, held its session via video conference in accordance with procedures for remote video litigation to consider the above-mentioned case. Since the case fulfilled established regulatory procedures, it was filed with General Secretariat of Zakat, Tax and Customs Committees under the above number and on 08/12/2021 AD.

Facts of this case are as follows:Company, C.R. No..... Filed through its attorney ..., holding National ID No., appointed under power of attorney No. ... a statement of claims in which he stated: "With reference to above-mentioned subject, and regarding ZATCA imposition of excise tax fines for January, February, March, April, May and June 2021, including late payment fines for aforementioned taxes, Plaintiff Company hereby objects these fines based on the following grounds: 1. Regarding late payment fine for January and February 2021 amounting to SAR 409,211.10 pursuant to invoice number ..., Company objects to ZATCA calculation of this fine based on the following grounds: 1. ZATCA does not issue an excise tax declaration to Company, but rather sends tax invoices for Company which pays them. Since inception of excise taxes calculation, Company responds to ZATCA requests and inquiries sent to it by e-mail, then ZATCA sends tax invoice numbers payable by Company by e-mail, which Company pays directly without delay and without incurring any fines. 2. On 03/03/2021 AD, ZATCA sent an e-mail to Company stating that "with reference to audit of taxpayer imports for the period of January and February 2021 AD, you are requested to fill out the attached file with details of imports for the period under audit, and provide us with purchase invoices (attachment No. (1))". This e-mail was immediately answered by Company. ZATCA sent several requests through email to Company after the latter responded to ZATCA requests in Clause No. (2) mentioned above. Company, in turn, responded to all those requests and inquiries without delay. 4. On 10/06/2021 AD, ZATCA sent an email to Company stating that initial assessment had been approved as a final assessment, and that tax invoices would be sent to taxpayer as soon as possible (Attachment No. (2)). But these invoices were not sent immediately. 5. On 21/09/2021 AD, ZATCA sent an email to Company including details of tax invoice numbers for January and February 2021, as well as late payment fine (Attachment No. (3)) as follows:

Item	Amount	Invoice Number
Tax Difference Due	2,046,055.52	...
Late Payment Fine	409,211.10	...

Kindly note that Company promptly responded to all ZATCA requests and fulfilled all tax obligations without delay. It paid due taxes the next day following the date of email as shown in Clause No. (6) below. 6. On 22/09/2021 AD, Company paid the full amount of excise tax for January and February 2021, amounting to SAR 2,046,055.52 (Attachment No. (4)). Based on the above, and since Company paid its taxes immediately and responded to ZATCA all inquiries and requests without delay, Company objects to any late payment fines. Company pleads with Department to accept its objection and cancel excise tax late payment fine for January and February 2021. b. Excise tax late payment fine for March, April, May and June 2021 is SAR 182,587.66 as per Invoice No. ... and SAR 338,702.06 as per Invoice No..... ZATCA imposed late payment fine for March, April, May and June 2021, amounting SAR 182,587.66 and SAR 338,702.06. Company objects to these fines based on the following grounds: 1. ZATCA does not issue an excise tax declaration to Company, but rather sends tax invoices for Company which pays them. Since inception of excise taxes calculation, Company responds to ZATCA requests and inquiries sent to it by e-mail, then ZATCA sends tax invoice numbers payable by Company by e-mail, which Company pays directly without delay and without incurring any fines. 2. On 08/07/2021 AD, ZATCA sent an email to Company stating that "with reference to the audit of taxpayer imports for the periods of March and April 2021 and May and June 2021, you are kindly requested to provide us with the following details within two working days (fill out the attached file as appropriate - provide us with purchase invoices, provided that each invoice number match its related customs declaration)



(Attachment No. (5)). The Company responded to the email in a timely manner and without delay. 3. ZATCA then sent several requests through email to Company after Company responded to ZATCA requests in Clause No. (2) above, and Company in turn responded to all those requests and inquiries without delay. 4. On 01/08/2021 AD, ZATCA sent an email to Company indicating that the initial assessment has been attached as follows (Attachment No. (6)):

Item	Amount
Re-assessment value for March and April 2021	2,258,013.75
Re-assessment value for May and June 2021	3,651,753.29

5. On 24/08/2021 AD, ZATCA sent an email to Company including the tax invoice numbers for March and April 2021 and May and June 2021 (Attachment No. (7)) as follows: "Kindly be notified that the following invoice numbers have been issued: (3003064152217003) (3003064152217004). Please make sure to make the payment as soon as possible. You may submit your objection, if any, and all its attachments to the Objections Department via mail". On 26/08/2021 AD and without any delay, Company paid the excise tax in full for March and April 2021, in the amount of SAR 2,258,013.75, and for May and June 2021 in the amount of SAR 3,651,753.29 (Attachments Nos. (8) & (9)). 7. By chance, and without receiving any email or any correspondence from ZATCA, the Company found on its account page on ZATCA's website under "Unpaid Invoices" invoices for late payment fines for March, April, May and June 2021 AD in the amount of SAR 182,587.66 as per Invoice No. (...) and SAR 338,702.06 as per Invoice No. (...). Please note that ZATCA did not send any notification that the Company had any fines, although the Company did not delay in responding to any of ZATCA's requests to be subject to any fine, nor did it delay in paying the amount of tax payable by it as explained in Item No. (6) above. Based on the above, and since Company paid tax immediately and responded to all inquiries and requests of ZATCA without delay, Company objects to any late payment fines, and we plead with Department to accept our objection and cancel the late payment fine for the excise tax for March and April 2021 and May and June 2021. We also note that Company paid the full amount of the disputed fines, while reserving the right to request a cash refund or deduction from taxes that fall due and payable by Company after settling dispute.

Having presented statement of claims to Defendant, it responded as follows: "Having reviewed Plaintiff statement of claims, it was found that the objection is related to late payment fines of excise tax for the tax periods in question. Accordingly, ZATCA sums up its response as follows: Plaintiff disclosed the excise tax for the tax periods in question, and ZATCA exercised its powers vested therein under Article 17.2 of Implementing Regulations of Excise Tax Law, which stipulated that: "2. For the purposes of this Article, an incorrect import declaration or Excise Tax Return shall mean any import declaration or Excise Tax Return which has led to an incorrect calculation of the Tax Due." Moreover, Paragraph (1(b)) of Article (17) of the same Implementing Regulations stipulated that: "ZATCA shall calculate the Tax Due amount on the Excise Goods, in accordance with the provisions of the Regulations; if taxpayer due: ..b. fails to comply with the conditions to file an Excise Tax Return or submitted an incorrect Excise Tax Return". This has led to differences and variation of the total excise tax due for the tax periods subject matter of the case. Having reviewed Plaintiff statement of claims, it was found that Plaintiff doesn't have proper understanding of Implementing Regulations of Excise Tax Law. Plaintiff believes that decisions issued against him by ZATCA are billing for differences between amount disclosed and amount payable. In reality, ZATCA decisions represent a re-assessment of tax periods and amounts previously disclosed. Late payment fine was imposed for the months following the tax period subject to objection, which is consistent with provisions of Article (22) of Excise Tax Law, stating that: "whoever does not pay tax due within period specified by Regulations shall be fined an amount equaling (5%) of the value of unpaid tax, for each month or fraction of month for which the tax was not paid." Accordingly,



ZATCA maintains validity of its procedure to re-assess the tax periods subject matter of the case. Based on the above, ZATCA requests Honorable Committee to dismiss the case for grounds stated above and to uphold ZATCA decision. ZATCA reserves the right to provide further responses and clarifications until pleadings closing.

Plaintiff submitted a reply stating the following: On Merits: First: We would like to establish facts related to ZATCA right to exercise powers stipulated in Article (17) of Implementing Regulations of Excise Tax for calculating the tax due, which states: Article 17: Assessment of Tax Due by the Authority

The Authority shall calculate the Tax Due amount on the Excise Goods, in accordance with the provisions of the Regulations; if the person liable for the payment of the Tax due:

a. Fails to comply with the conditions to file an import declaration or submitted an incorrect import declaration;

b. Fails to comply with the conditions to file an Excise Tax Return or submitted an incorrect Excise Tax Return; or We also note that Customs Authority, which has become part of ZATCA, has not exercised its powers properly according to Article (15) of Implementing Regulations of Excise Tax Law, which states: "Article 15: Reporting of Tax Due on Importation

1) In case of importing Excise goods and releasing it for consumption, the amount of Tax Due shall be calculated by the Saudi Customs based on the Tax Base of these goods and in accordance with the procedures specified in the Common Customs Law.

2) For the purposes of the first paragraph of this Article, the importer shall provide the following information to the Saudi Customs:

a. Information on the type of Excise Goods intended to be released;

b. The retail sales price of these Excise Goods.

c. Any other information requested by Saudi Customs.

3) If Saudi Customs finds that imported Excise Goods have not been declared, they shall inform the Authority accordingly". Moreover, we would like to make clear the following points: Taxpayers are unable to submit excise tax declaration on ZATCA website, due to absence of such declaration on the website; an issue which is beyond taxpayers control. Additionally, Customs Authority which joined ZATCA didn't request information or calculate excise tax. Acting out of its concern, Plaintiff contacted ZATCA immediately and requested that tax invoices be issued for the purposes of paying tax due on goods. That was on plaintiff initiative, as no notification received by it from Customs Authority. Accordingly, we conclude that there was no delay or negligence on the part of taxpayer. Thus, no excise tax differences for tax periods in dispute have emerged, as stated in ZATCA Reply, and it is apparent that taxpayer was keen to pay excise tax on due dates. Second: As for the argument that taxpayer has no clear understanding of Implementing Regulations for Excise Tax Law, we would like to clarify that: • It was not made clear that taxpayer was required to submit any information to the custom authority, which joined ZATCA regarding the import within the certificate of excise tax registration (certificate attached) • No information was requested from customs authority or ZATCA regarding the import subject to excise tax. • It was taxpayer who took initiative to pay excise tax directly and made payment forthwith without delay. Therefore, no late payment should be imposed on taxpayer as it was him who took the initiative to pay. Requests: 1. We request that your Honorable Committee to consider the formal and substantive aspects of our case and cancel imposed fines. Plaintiff was not the party responsible for tax payment delay, but rather was the failure to request information mentioned in Article (15) of Implementing Regulations of Excise Tax Law, and Plaintiff failure to make payments, noting that a tax processing and collection mechanism has been resolved with ZATCA.



On Sunday, 02/10/2022 AD, First Department to Adjudicate Excise Tax Violations and Disputes in Riyadh held its first session via video conference according to the remote video litigation procedures at 5:00 PM based on Article 15.2 of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No.: 21/04/1441 AH to consider the case filed by the Plaintiff against the Defendant, and upon calling the parties to the case, the Plaintiff's attorney, a National, holder of ID no..... appeared in his capacity as the attorney for the Plaintiff under the power of attorney attached to the case file, and appeared for the Defendant, a..... National, holder of ID in his capacity as a representative of the Defendant under the authorization letter No..... issued by the Deputy Governor for Legal Affairs. Having discussed the matter in dispute with the two parties, the Department decided to adjourn the case to the session of Sunday 09/10/2022 at 4:00 PM to further study and consider the case. This session was concluded at 05:30 PM.

On Sunday, 02/10/2022 AD, First Department to Adjudicate Excise Tax Violations and Disputes in Riyadh held its first session via video conference according to the remote video litigation procedures at 5:00 PM based on Article 15.2 of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No.: (26040), dated 21/04/1441 AH to consider case filed by Plaintiff against Defendant. Having called parties to case, Plaintiff attorney, a Saudi national, (... Nationality), holding National ID No., appeared in his capacity as the attorney for the Plaintiff under the power of attorney attached to the case file, and Mr. appeared (... Mr....., anational, holding National ID No..... appeared as representative of Defendant by virtue of authorization No. dated ... issued by Deputy Governor for Legal Affairs. Having asked Plaintiff attorney about his case, he maintained his statements contained in the statement of claims submitted to General Secretariat of Zakat, Tax and Customs Committees, and having asked Defendant's representative about his reply to Plaintiff claims, he maintained his answers contained in his reply deposited in the case file. when asked if either of them had any other statements, both parties answered that they hadn't. Accordingly, Department decided to close pleading and adjourn session for deliberation before issuing decision.

Grounds:

Having reviewed Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH , as amended, and its Implementing Regulations issued by Minister of Finance Decision No. (1535) of 11/06/1425 AH , as amended, Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH , as amended, Implementing Regulations of the Law issued by the Decision of Board of Directors of General Authority of Zakat and Income (currently ZATCA) No. (2-3-19) dated 10/09/1440 AH , as amended, and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant laws, regulations and decisions.

In Form: Plaintiff filed a case seeking cancellation of Defendant decision regarding imposition of late payment fine for first tax period of 2021 based on Excise Tax Law and its Implementing Regulations, and since this dispute is a tax dispute, it then falls within jurisdiction of Committee for Resolution of Excise Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH, and since case was filed by a person with capacity, and within period prescribed by law, it is therefore accepted in form.

On Merits: Having considered the case papers and the requests, defenses and pleas made by the parties, it was found that the dispute relates to the Plaintiff's objection to the Defendant's decision about the final reassessment of the second tax period of 2021, and the related fines. The Department concluded that: "whoever who does not pay the tax due within the period specified by the Regulations shall be fined ...". Article 18.4 of the Implementing Regulations of the Excise Tax Law also provides that: "The payment of Tax Due imposed by a Tax assessment shall be made to the Authority within 15 days after the person liable for the Tax



Due has been notified by the Authority, in accordance with Article seventeen (17) of the Regulations”, indicating that the fifteen days are calculated from the date of notification not from the date of falling due as included in the new amendment to this article effected by ZATCA’s Board of Directors decision No. (14-06-22) dated 02/04/1444 AH, which does not apply retrospectively. Since the late payment fine in dispute is related to - as stated in the Defendant's reply - a tax imposed the Defendant pursuant to a tax assessment resulting from the exercise of its authority stipulated in Article (17) of the Implementing Regulations, which states that: "ZATCA shall calculate Tax Due amount on Excise Goods, in accordance with Regulations provisions; if taxpayer. Since the case papers indicate that the taxpayer has paid the tax imposed by the Defendant pursuant to a tax assessment within the specified period as per Article 18.4 ; and Given the nature of the late payment fine, which is a means of pressuring the taxpayer to fulfill his obligations after learning about them, rather than disciplinary action for tax evasion, which has other provisions; Therefore, the late payment fines for the tax period (...) should be canceled for violating the provisions of the Law and its Regulations.

Decision:

- Canceling Defendant decision regarding late payment fine.

This decision was issued in presence of both parties. Department set thirty (30) days from date for receiving copy of decision, and may extend delivery date for another (30) days.

Parties hereto may request to appeal decision within thirty (30) days from the day following the date specified for its receipt. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.

Appeal Committee:

Appeal Committee ruled to uphold Department decision.



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2022-186)

Delivered in Case No. (E-86687-2021)

Keywords:

Excise Tax - Prescription- Final Reassessment of Tax Period - Tax Differences - Late Payment Fine.

Abstract:

The Plaintiff requested to cancel ZATCA decision regarding the final reassessment of the second and third tax periods of 2021 AD, and the resulting fines. The Plaintiff based her objection on grounds that she had submitted her objection to ZATCA after ZATCA's decision appeared on the system based on the direction of ZATCA's employees. ZATCA responded that the Plaintiff did not submit an objection to ZATCA within the period prescribed by law, and therefore the disputed decision became time-barred. However, the Department concluded with regard to the "Tax Differences" item that: The Plaintiff submitted invoices with customs declarations indicating that an amount was charged in the excise tax field supported by bank receipts for payment of the tax to the customs authority. ZATCA however did not provide a written notice explaining the basis of calculation of the tax. With regard to the "Late Payment Fine" item: Since the late payment fine resulted from the first item, therefore, it should take the same effect. Department ruled to Cancel the Defendant's decision and the Department's decision is final and enforceable.

Documents:

- Article (17.4) of [the Implementing Regulations of the Excise Tax Law issued by the decision No. \(2-3-9\) of 10/09/1440 AH of the Board of Directors of ZATCA.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday 09/10/2022 AD, First Department to Adjudicate Excise Tax Violations and Disputes in Riyadh city, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (13957) dated 26/02/1444 AH, held its session via video conference in accordance with procedures for remote video litigation to consider the above-mentioned case. Since the case fulfilled established regulatory procedures, it was filed with General Secretariat of Zakat, Tax and Customs Committees under the above number and on 16/12/2021 AD.

The facts of this case are summed up as follows: ..., holder of National ID No., in his capacity as the attorney under Power of Attorney no..... for the Plaintiff, National ID No....., in her capacity as the owner of CO., commercial registration no., has submitted a statement of claims that included objections to the Defendant decision regarding the final reassessment of the second and third tax periods of 2021 AD, and the related fines, and moving to cancel the Defendant's decisions.



Having presented statement of claims to Defendant, it responded as follows: "with reference to the above case, we would like to clarify that the Plaintiff did not file an objection with ZATCA within the specified period in accordance with the provisions of the Tax Dispute and Violation Committee Procedures. Article (2) of these Procedures stipulates that: "Any person against whom a decision has been issued by ZATCA may file an objection before it within 60 days from the date of notification thereof.", and since ZATCA's re-assessment decision was issued on 12/07/2021 AD, while the Plaintiff's objection submitted to ZATCA was on 16/10/2021 AD for the second period and 17/10/2021 AD for the third period; therefore, the objections are deemed to have been instituted after 60 days from the date of notification. Hence, the appealed decision has prescribed and cannot be appealed as per Article 3.1 of the Tax Dispute and Violation Committee Procedures, Second: Requests: In light of the foregoing, ZATCA requests the Honorable Department to dismiss the case in form for the above grounds reserving its right to provide further responses and clarifications before the closing of the pleadings."

The Plaintiff submitted a replication, in which she stated: "As for the objection, it was filed after appearing on the system, based on the instructions of ZATCA's employees that emails are only for inquiries and that I can't file an objection except after the decision appeared on the system. An SMS was received on 04/10/2021 which was also the date when the decision appeared on the system, and not as mentioned by the Defendant that it was on 12/07/2021 AD. It was just only after 13 days that the objection was filed, i.e. on 16/10/2021 AD and 17/10/2021 AD for the two periods. However, two late payment fines were levied for the two periods as shown in the SMS attachments. As far as we know, the fines are imposed after the decision is issued and the taxpayer given the chance to pay. Every month, we have been receiving late payment fine notices from ZATCA that exceeded the capital by three times, and for goods sold six months back or more. On 01/12/2021 AD, we received a reply that the objection is rejected for being filed after the specified period despite that ZATCA employees kept telling me that my objection period ends on 04/12/2021 AD, i.e. after (60) days from the date of declaration. Attached are the details of the communications via email, our requests and objections to the assessment. You can also review the records whether phone calls, complaints, emails or website objections.

On Sunday, 09/10/2022 AD, the First Department to Adjudicate Excise Tax Violations and Disputes in Riyadh held its first session via video conference as per the remote video litigation procedures at 6:15 PM based on Article 15.2 of the Tax Dispute and Violation Committee Procedures issued by Royal Order No. (26040), dated 21/04/1441 AH to consider the case filed by the Plaintiff against the Defendant, and having called the parties to the case, Mr., anational, holder of ID No. (...), appeared as the attorney for the Plaintiff under the Power of Attorney contained in the case file. Mr., anational, holder of ID No..... also represented the Defendant, under authorization letter number .../.../.....

dated .../.../..... Issued by the Deputy Governor for Legal Affairs. Having asked the Plaintiff's attorney about his case, he maintained his statements contained in the statement of claims submitted to the General Secretariat of the Zakat, Tax and Customs Committees, and having asked the Defendant's representative about his reply to the Plaintiff's claims, he maintained his answers contained in his reply deposited in the case file. When the two parties to the case were asked if they had any other statements, they answered no settling for their petitions that had been submitted. Accordingly, Department decided to close pleading and adjourn session for deliberation before issuing decision.

Grounds:

Having perused the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH , as amended, and its Implementing Regulations issued by the Minister of



Finance Decision No. (1535) of 11/06/1425 AH , as amended, the Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH, as amended, the Implementing Regulations of the Law issued by the Decision of the Board of Directors of the General Authority of Zakat and Income (currently ZATCA) No. (2-3-19) dated 10/09/1440 AH , as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant laws, regulations and decisions.

In Form: Since the Plaintiff instituted her case petitioning for a decision to cancel the Defendant's decision regarding the final reassessment of the second and third tax periods of 2021 AD, and the related fines, based on the Excise Tax Law and its Implementing Regulations, and since this dispute is a tax dispute, it then falls within the jurisdiction of the Committee for Resolution of Excise Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH, and since the case was filed by a person with capacity, and within the period prescribed by law, based on the fact that such period is calculated from the date of receiving the notification of decision according to Article (57) of the Implementing Regulations of the Law and the Defendant, which bears the responsibility for sending the notice as per Article 56 of the Implementing Regulations, could not prove that the delivery of notice was on 12/07/2021 AD, while the Plaintiff's attorney claimed that the notice was delivered to the Plaintiff on 04/10/2021 AD attaching an SMS bearing the same date, the case is therefore accepted in form.

On Merits: Having considered the case papers and the requests, defenses and pleas made by the parties, it was found that the dispute relates to the Plaintiff's objection to the Defendant's decision about the final reassessment of the second and third tax periods of 2021, and the related fines. The Department concluded that:

First: Tax Differences Item: It was found that the Plaintiff objects to the Defendant's decision regarding the second tax period of 2021 (...) and the third tax period of 2021 (...) and the imposition of Excise Tax on some imports. The Plaintiff submitted invoices issued byCompany along with customs declarations showing that an excise tax amount was charged supported by bank receipts for payment of the tax to the customs authority. ZATCA however did not provide a written notice explaining the basis of calculation of the tax, which is held in violation of Article 17.4 of the Implementing Regulations of the Excise Tax Law. Accordingly, the Department determined that the Plaintiff's claim as to this item is admissible.

Second: Late Payment Fine: The Plaintiff objected to the Defendant's decision to charge a late payment fine resulting from the assessment of the second tax period of 2021 (...) and the third tax period of 2021 (...) and the imposition of excise tax on some imports. Since the Department decided to cancel item (First) of Defendant's Decision, and since the late payment fine resulted from that; therefore, the resulting occurrence must take the same effect. Hence, the Department rules to accept the Plaintiff's claim as to this item.

Decision:

First: Cancel the Defendant's decision regarding the excise tax differences.

Second: Canceling Defendant decision regarding late payment fine.

This decision was issued in presence of both parties. Department set thirty (30) days from date for receiving copy of decision, and may extend delivery date for another (30) days. Parties hereto may request to appeal decision within thirty (30) days from the day following the date specified for its receipt. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.



Appeal Committee:

Appeal Committee ruled to uphold Department decision.



Adjudication Committee

First Department to Adjudicate Excise Goods Tax
Violations and Disputes in Riyadh

Decision No. (ER-2022-187)

Delivered in Case No. (E-88858-2021)

Keywords:

Excise Goods Tax - Final Reassessment of Tax period - Late Payment Fine - Tax Differences.

Abstract:

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding the final reassessment of the second tax period of 2021, and the late payment fine. The Plaintiff based her objection on grounds that ZATCA charged differences for imported goods items despite providing ZATCA's employees with a list of imported items and price schedule, but it didn't receive an answer to its inquiries, ZATCA responded: 1. Regarding the tax differences payable to ZATCA: The reason for charging the differences is that the customs declaration held by the Plaintiff shows that the tax was not duly calculated. 2. Regarding the late payment fine: The tax differences found caused a late payment fine to be imposed. The Department found: First: Tax Differences for the Second Period of 2021: The Plaintiff has paid part of the Excise Tax, and that the tax differences resulting from the final reassessment are valid and payable. Second: Late Payment Fine for the second period of 2021: The Department resolved as to item First to modify the Defendant's decision regarding the tax differences payable excluding the tax on the items (carbonated water - soda - unflavored), and since a portion of the late payment fine resulted from calculating the tax, they take the same effect. Department ruled to Modify the tax assessment decision, by excluding the tax imposed on the items (carbonated water - soda - unflavored), and modifying the late payment fines accordingly, and the decision is final and enforceable.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday 10/02/2022, the First Department to Adjudicate Excise Tax Violations and Disputes in Riyadh formed pursuant to Article (67) of the Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (13957) dated 26/02/1444 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned case. Since the case satisfied the prescribed regulatory procedures, it was filed with the General Secretariat of the Zakat, Tax and Customs Committees under the above number on 26/12/2021 AD.

The facts of this case are summed up in that Mr....., holder of National ID No., in his capacity as the owner of Company, Commercial Registration No. ... filed a statement of claim that included an objection to the decisions of the Defendant, ZATCA, regarding the final reassessment of the second tax period of 2021, and the related late payment fine, and requested that the Defendant's decision be canceled.

Having presented statement of claims to Defendant, it responded as follows: "Having reviewed the Plaintiff's statement of claims including his objection to ZATCA's decision regarding the



Excise Tax for the aforementioned period, and the resulting fines, We summarize our response as follows: 1. Regarding the tax differences payable to ZATCA: Article (17) of the Implementing Regulations of the Excise Tax Law provided for the cases that authorize ZATCA to charge Excise Tax. In light of that article, ZATCA found tax differences that were not paid when importing the excise goods by the Plaintiff. The customs declaration held by the Plaintiff showed that the tax was not duly calculated, as it was calculated based on (purchase cost + customs duties), which is inconsistent with the provisions for calculating the tax stipulated in the Common Excise Tax Agreement of GCC States. Article 6.2 of the said Agreement provides that: "Excise taxes shall be imposed on the remaining excise goods based on their retail sale price, provided that the retail sale price is that which is set by the importer or producer of these excise goods, or in accordance with the standard price list to be periodically agreed upon by the GCC tax authorities, whichever is higher." Accordingly, ZATCA calculated the tax based on the final consumer sale price disclosed by the Plaintiff, which resulted in tax differences, and since these differences were not paid upon import, the Plaintiff is required to pay them to ZATCA. 2. Regarding the late payment fine: As a consequence and due to the tax differences, a late payment fine was charged to the Plaintiff based on Article (22) of the Excise Tax Law, which states: "whoever who does not pay the tax due within the period specified by the Regulations shall be fined an amount equaling (5%) of the value of unpaid tax, for each month or fraction of month for which the tax was not paid." Accordingly, ZATCA maintains the validity of its decision regarding the charging of excise tax and resulting fines. Based on the above, ZATCA requests the Honorable Committee to dismiss the case for the reasons stated above and to confirm ZATCA's decision. ZATCA reserves the right to provide further responses and clarifications until pleadings closing.

The Plaintiff submitted a Replication, in which he replied as follows: "First: We refer to all communications and emails sent by us regarding that matter, which prove that we have followed all applicable procedures and satisfied all requirements paying the excise tax for (11) items. Then, at the request of ZATCA employees, they were provided with a list of imported items and prices schedule. However, we were surprised to find differences regarding imported items. When we asked them about the nature of these differences and how they were calculated, we received no answer. Additionally, we would also like to call your attention to the fact that the items for which the excise tax was paid are not subject to excise tax, as shown in the attachment, item No. (5) "Carbonated Water". Page 11, clause 5.1 of the Guide for Goods subject to Excise Tax defined Soft Drinks (Carbonated Water) as: (All carbonated beverages other than unflavored carbonated water. Soft Drinks also include any concentrates, powders, solutions or extracts that can be converted into soft drinks". This specification doesn't apply to the goods referred to in the attachment. Further, the assessment issued by ZATCA indicates that the charged tax is undue for covering goods not subject to the excise tax, which led to differences in the assessment made by the Defendant and the actual amount paid by us, and given that the Defendant did not provide us with the mechanism for calculating the end user price, which it relied on for calculating the excise tax violating the provisions of Article 17.4 of the Implementing Regulations of the Excise Tax Law, which provides that: "The written notification shall include the grounds, on which the Authority calculates the amount of the Tax Due" and since a legal text is ought to be applied rather than disregarded, and since ZATCA did not provide us with any document, mechanism or ground for calculating the tax, which resulted in significant differences between the tax paid by us at the customs outlet and the tax reassessed by ZATCA, it becomes plain that the Defendant did not follow the procedures stipulated as mandatory rules that cannot be disputed, as no arbitrary assessment made without providing us with the grounds for it may be considered. For those grounds, the assessment made by ZATCA must be nullified for being ill-founded. Third: With regard to the late payment fine, we refer to clauses "First" and "Second" above. The late payment fine was charged on account of ZATCA's assessment and charge of an additional Excise Tax on us. It



was an inevitable result of ZATCA's assessment that was refuted in the above two points. Therefore, this result should be dismissed as well. In light of the foregoing, I plead with you Honor to cancel ZATCA's new assessment as it included items not subject to excise tax, and for the Defendant hasn't provided us with the grounds for calculating the differences between the tax paid by us and the tax amount assessed by the Defendant".

On Sunday, 02/10/2022, the First Department to Adjudicate Excise Tax Violations and Disputes in Riyadh held its first session via video conference in accordance with the procedures for remote video litigation at 7:00 PM based on Article 15.2 of the Tax Dispute and Violation Committee Procedures issued by Royal Order No.: (26040), dated 21/04/1441 AH to consider the case filed by the Plaintiff against the Defendant. Having called the parties to the case, the Plaintiff ..., a..... national, holder of National ID No. (...), declared his appearance in person. For the Defendant, Mr....., a..... National, holder of National ID No..... appeared under authorization letter No..... datedissued by the Deputy Governor for Legal Affairs. Having asked the two parties to the case if they had any statements to add, the Plaintiff stated that he objected to subjecting the unflavored carbonated water to the excise tax assessment. Accordingly, the Department decided to close the pleadings and adjourn the session for deliberation, in preparation for delivering its decision.

Grounds:

Having reviewed Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance Decision No. (1535) of 11/06/1425 AH, as amended, Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH, as amended, Implementing Regulations of the Law issued by the Decision of Board of Directors of General Authority of Zakat and Income (currently ZATCA) No. (2-3-19) dated 10/09/1440 AH, as amended, and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant laws, regulations and decisions.

In Form: Since the Plaintiff instituted his case moving to cancel the Defendant's decision regarding the final re-assessment of second tax period of 2021 and the related late payment fine based on the Excise Tax Law and its Implementing Regulations, and since this dispute is one of the tax disputes, it is considered one of the disputes that fall within the jurisdiction of the Excise Goods Tax Violations and Disputes Committee pursuant to Royal Order No. (26040) dated 21/04/1441 AH, and since the case was filed by a person with the capacity, and within the period prescribed by law, it is then accepted in form.

On Merits: Having considered the case papers and the requests, defenses and pleas made by the parties, it was found that the dispute relates to the Plaintiff's objection to the Defendant's decision about the final reassessment of the second tax period of 2021, and the related fines. The Department concluded that:

First: Tax Differences for the Second Period of 2021: The Department found that the Plaintiff objects to the Defendant's procedure as to re-assessing the tax period in question, and charging tax differences on the goods imported by the Plaintiff. The Plaintiff provided proof for his payment of the excise tax to the customs authority submitting a customs clearance statement, and requested that the Defendant indicates the grounds for re-assessment and tax differences charged. Additionally, when looking at the mechanism for calculating the excise tax by customs authority, it was found to be erroneous for using this formula (purchase cost + customs duties) as the Defendant indicated in its reply, which means that the Plaintiff didn't pay the excise tax in full, and that the tax differences resulting from the final reassessment are valid and due. As for the Plaintiff's claim that he objected to subjecting the unflavored carbonated water to the excise tax assessment, the Plaintiff has provided proof that these goods are exempted from the excise tax providing the Guide for Goods subject to Excise Tax and the carbonated water label which includes the ingredients (water - sodium bicarbonate). Accordingly, the



Department hereby decides to modify the Defendant's decision as to the amount of tax differences after excluding the tax charged on the (carbonated water - soda - unflavored) item.

Second: Late Payment Fine for the second period of 2021: It was established that the Plaintiff objects to the Defendant's decision to impose a late payment fine resulting from the reassessment of the tax period in question, and the imposition of excise tax differences on imported items. The Plaintiff stated that his case was limited to the objection to subjecting the unflavored carbonated water to the excise tax assessment. Since the Department as resolved in item "First" to modify the Defendant's decision regarding the amount of tax differences after excluding the tax on the (carbonated water - soda - unflavored) item, and since a portion of the late payment fine resulted from charging tax on the said item. Therefore, such portion of fine should be consequently canceled. Accordingly, the Department decides to modify the Defendant's decision to charge the fine excluding the fine imposed as a result of charging excise tax on the item referred to above.

Decision:

First: Modify the tax assessment decision excluding the tax imposed on the (carbonated water - soda - unflavored) item.

Second: Modify the late payment fines excluding the fine imposed as a result of charging excise tax on the item referred to in para "First" of this decision.

This decision was delivered in presence of the parties. Either party to the case may appeal against the decision within thirty days from the day following the date set for receipt of the decision, whereafter, the decision will be final and enforceable. The date of entering the decision to the e-system of the General Secretariat of the Zakat, Tax and Customs Committees is the date of delivery of the decision

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.

Appeal Committee:

Appeal Committee ruled to uphold Department decision.



Adjudication Committee

First Department to Adjudicate Excise Tax
Violations and Disputes in Riyadh

Decision No. (ER-2022-200)**Delivered in Case No. (E-136681-2022)****Keywords:**

Excise Tax - Excise Tax Differences - late Payment Fine - Initial Assessment - Legal Period - If a Matter Ceases to Exist, That Which is Incidental to it Shall Also Cease to Exist.

Abstract:

Plaintiff requests to cancel ZATCA decision regarding the initial assessment and fines imposed on the organization. Plaintiff based its objection on the fact that the organization's department received the initial assessment during the inspection work carried by ZATCA. However, on 29/03/1443 AH, corresponding to 01/02/2022 AD, ZATCA sent notices of fines through the email address registered with ZATCA. Plaintiff also claimed that its objection was filed within the period prescribed by law, and the so was the case filed with Department, and that ZATCA didn't send a written notice of the grounds for calculations of its claims, and that the establishment' management has submitted all documents related to the levelness to the customs authority, being the entity authorized to collect duties and transfer the same to ZATCA. Plaintiff moved to cancel the fines as well according to the jurisprudence rule: (If a Matter Ceases to Exist, That Which is Incidental to it Shall Also Cease to Exist), ZATCA responded that Plaintiff objection was time-barred as Plaintiff did not file the same within the prescribed period, and that ZATCA notified Plaintiff on 03/06/2021 by email of the final re-assessment. In respect of the tax differences item, Department found that: The case files did not include- nor did Defendant submit- anything that prove that any of the cases entitling ZATCA to assess the excise tax was present, it was also found that ZATCA failed to comply with the legal requirements in notifying the taxpayer by a written notice of the amount of the tax due, and that the notice should include the grounds relied upon for calculating the tax. With regard to the "Late Payment Fine" item: Since Department concluded in item "First" to cancel the tax differences decision, and since the late payment fine was incidental to that decision, it should also be canceled. Accordingly, Department ruled to: Cancel Defendant decision regarding excise tax differences and the late payment fine and that the decision is final and enforceable.

Documents:

- Article (22) of [Excise Tax Law promulgated by Royal Decree No. \(M/86\) dated 27/08/1438 AH.](#)
- Article (17.1, 3, 4) of [Implementing Regulations of Excise Tax Law issued pursuant to the decision of the Board of Directors of ZATCA No. \(2-3-19\) and dated 10/09/1440 AH.](#)
 - Jurisprudence Rule: "If a Matter Ceases to Exist, That Which is Incidental to it Shall Also Cease to Exist."

Facts:



Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday 09/10/2022 AD, First Department to Adjudicate Excise Tax Violations and Disputes in Riyadh city, formed pursuant to Article (67) of the Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (13957) dated 26/02/1444 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned case. Since the case satisfied the prescribed regulatory procedures, it was filed with General Secretariat of the Zakat, Tax and Customs Committees under the above number and on 19/07/2022 AD.

Facts of this case are as follows: Mr. ..., National ID No. (...), in his capacity as owner of ... establishment, C.R. No. (...), submitted a statement of claims, in which he stated: "Referring to the initial reassessment of the ... Establishment (establishment's branch) for the said periods that was addressed by ZATCA to the establishment indicating tax differences in a total amount of SAR 492,207.71 in addition to the fines totaling SAR 180,624.47 charged by ZATCA (correspondence from ZATCA to the Establishment is attached). Establishment management respectfully declares that it objects to ZATCA initial assessment and the fines imposed on Establishment. on these grounds: formal aspect: filing the objection to ZATCA Paragraphs (3) and (4) of Article (17) of Implementing Regulations of Excise Tax Law stipulate that: 3. ZATCA shall inform taxpayer of amount of Tax Due in writing. in calculating the amount of tax due. 4. "The written notification shall include the grounds, on which ZATCA calculates the amount of the Tax Due". However, ZATCA has not until the date hereof issued a tax assessment for the Establishment that satisfies all legal requirements of notification as stated in the paragraphs mentioned above. Rather, the Establishment only received the initial assessment derived through ZATCA inspection of the establishment's documents and data. However, ZATCA issued notices of fines on 29/03/1443 AH, corresponding to 01/02/2022 AD. The notices were received on the aforementioned date via the email registered with ZATCA (copies of the notices are attached). Since the end date of the period specified for the Establishment to submit an objection (which is calculated from the date of actual receipt of ZATCA notices referred to above) as per Article 2 of the Tax Dispute Violation Committee Procedures was 01/04/2022 AD, which falls on a Friday, the official weekend, that end date shall be the first working day following the official holiday. Accordingly, the end date for submitting the objection was 03/04/2022, and the date of submitting the objection according to our letter was 23/03/2022, so the Establishment's objection was submitted within the 60-day period prescribed by law from the date of receiving ZATCA notification. Objection sent via e-mail. We also provide a proof that we were unable to submit the objection via ZATCA e-portal. We were told to send the objection via e-mail.

As for this case filed with Department: Article 2 of the Tax Dispute Violation Committee Procedures provides that" We were told to send the objection via e-mail. As for this case filed with Department: Article 2 of the Tax Dispute Violation Committee Procedures provides that" "... If a decision is made to deny the objection or a period of 90 days lapses without deciding thereon, a taxpayer may within 30 days from the date of being notified of the denial of the objection or upon the lapse of 90 days without a decision thereon, take any of the following actions: 2. File a lawsuit directly before the dispute committee". In our case, 90 days has passed without a decision from ZATCA. As we mentioned above, the objection was filed on 23/03/2022 AD and the end of the ninety days is 20/06/2022 AD. Thus, the end date for filing a case with Department is 20/07/2022 AD. Thus, the case was filed within the legal period, which is 30 days following the end of the ninety days set for submitting the objection to ZATCA. On Merits: First: Tax Differences: The Establishment's management believes that the absence of a written notice of the grounds on which ZATCA based the claim invalidates ZATCA claim, as it should have complied with the formal aspects when making any claim so that the Establishment can submit a grounded objection, if any, to those claims. However, and



without prejudice to the Establishment's right to reject ZATCA claim for the tax differences for disregarding the formal aspects of a ZATCA assessment, where ZATCA failed to comply with paragraphs 3&4 of Article 17 of Implementing Regulations of Excise Tax Law, the Establishment's management will submit the following points, which it believes to be grounds for the initial assessment, based on ZATCA inspection of the Establishment: 1. The party responsible for collecting the tax from importers: Article 15 of Implementing Regulations of Excise Tax Law stipulates that: "1. In case of importing Excise goods and releasing it for consumption, the amount of Tax Due shall be calculated by the Saudi Customs based on the Tax Base of these goods and in accordance with the procedures specified in the Common Customs Law. For the purposes of the first paragraph of this Article, Importer shall provide the following information to the Saudi Customs: A. Information on the type of Excise Goods intended to be released; b. The retail sales price of these Excise Goods; C. Any other information required by Saudi Customs. 3. If Saudi Customs finds that imported Excise Goods have not been declared, they shall inform ZATCA accordingly". Paragraph (1) of Article 18 of the Regulations also states that: "1. "Without prejudice to the provisions of the Common Customs Law, The Saudi Customs shall collect the Tax Due on imports on behalf of ZATCA and according to the procedures determined by ZATCA. The Saudi Customs shall transfer the Taxes collected on behalf of ZATCA, as well as hand over any supporting documentation, to ZATCA within seven (7) to fourteen (14) days as of the collection date." In this connection, the Establishment would like to clarify that its activity is the importation of materials that are used for the production of some other products, and those imported materials are sold to factories in the Kingdom. There was no conclusive determination as to whether those materials are subject to tax or not, neither in Common Excise Tax Agreement not in Excise Tax Law or its Implementing Regulations. As per the tests quoted above from Implementing Regulations of Excise Tax Law, it is plain that the customs authority is the entity responsible for calculating and collecting the tax from importers, and that Establishment's management has submitted all documents related to the levelness to the customs authority. Where the customs authority didn't comply with the provisions of Implementing Regulations of Excise Tax Law referred to, being the entity authorized to collect and transfer taxes to ZATCA in this case, there is no text in the Common Excise Tax Agreement of GCC or in Excise Tax Law or its Implementing Regulations stipulating that in the event that the customs authority does not apply the provisions of Implementing Regulations of the Law, Importer (who is required to submit levelness documents and information) will be subject to reassessment of tax and fines as a result of the failure by the customs authority to apply the Law and Regulations. 2. Cases in which ZATCA assesses the tax for importers. Article 17.1(a) of Implementing Regulations of Excise Tax Law states that: 1. ZATCA shall calculate Tax Due amount on Excise Goods, in accordance with the provisions of Regulations; if taxpayer: A. Fails to comply with conditions to file an import declaration or submitted incorrect import declaration" Paragraph No. (2) of the same Article also provides that: 2. For the purposes of this Article, an incorrect import declaration or Excise Tax Return shall mean any import declaration or Excise Tax Return which has led to an incorrect calculation of the Tax Due". The above-cited tests of Implementing Regulations clearly and explicitly without leaving room for doubt specifies the cases in which ZATCA shall make the assessment of tax on importers. It can be said that this is one case, where Importer submits invalid import declarations to the customs authority or withhold any information, which is never the case here. Rather, the Establishment's management submitted all the documents related to the levelness and the general layer to customs authority, which was the party which failed to carry out its duties. Nonetheless, the customs authority charged a tax on some imports but not others. For the customs declaration No. ..., the amount of the excise tax was determined. 3. Declaration of the due tax: Tax due on goods imported from outside the Kingdom to the Kingdom is declared through the import declaration (customs declaration) in the event that the imported goods are offered for



consumption in the Kingdom, i.e. they do not enter immediately after import into an excise tax suspending status. Excise goods are considered to have been imported into the Kingdom if they are brought into the Kingdom and declared for assessment purposes to the Saudi Customs, and are not subsequently placed in a licensed customs warehouse or entered into an excise tax suspending status. The aim of that is to finalize the customs clearance procedures for such goods and handling them freely in the domestic markets without restrictions, in accordance with the excise tax legislation applicable in the Kingdom. (Attachment No. 6 - customs declaration for the periods in dispute).

4. Type of excise goods: ZATCA did not specify the type of excise goods for calculating the tax, but it may have charged the tax on the sweetened beverages, which is defined in the bulletin issued by ZATCA as follows: "Any product to which any source of sugar or other sweetener is added, which is produced for the purpose of being consumed as a beverage, whether as a ready-to-drink beverage, or in the form of concentrates, powders, or any other types that can be converted into a beverage". Kindly note that the goods we import are (concentrated drink "syrup - sauce" - powder - coffee) (attachment No. 7 - invoice from the external supplier as a sample). Hence, these goods are not ready-to-drink beverage or can be simply dissolved in water and drunk. Rather, these are flavors added to soft drinks or cakes after they are prepared. As mentioned in the Guide for Goods subject to Excise Tax, the goods considered as sweetened beverages, it is difficult to determine whether a commodity is covered by the definition of sweetened beverages or not. For sake of clarity, a list of goods codes was set that links the description of the items under this code and the goods considered as sweetened beverages. The list consists of 5 main items, 25 sub-items, and 50 codes according to the unified customs tariff. The list includes the item codes, the description of items covered by these codes, and the main and sub-items associated with these codes in the unified customs tariff. The codes of the items considered as sweetened beverages are stated in italicized bold. The codes were determined based on Ministerial Committee Resolution No. (1/4/2/19/42/A) dated 09/04/1440 AH, corresponding to 09/05/2019 AD. These codes were determined by the customs authority, which is the body responsible for that with the laboratories and experts it has. Since the customs authority did not specify that imported goods are sweetened beverages, we object to ZATCA re-assessment considering them as excise goods. Accordingly, we plead with the Honorable Department to cancel the claims and any over-assessment of tax against the Establishment.

5. Destruction of goods: ZATCA should take into consideration the results of the test conducted by the customs authority, which proves that the samples specified in the issued notice are adulterated as per Customs Test No. (7494, 192399).

Second: Fines: According to the jurisprudence rule that "if a matter ceases to exist, that which is incidental to it shall also cease to exist", the fines which are incidental to ZATCA assessment which we have refuted should be also canceled as we maintain our claim that there is no violation committed by the Establishment.

Having presented statement of claims to Defendant, it responded as follows: "Having considered Plaintiff case, it was found that Plaintiff objects to ZATCA decision regarding the reassessment of the excise goods tax, and the resulting late payment fine. Accordingly, ZATCA sums up its response as follows: We reference to the above case, we hereby respond that Plaintiff did not file an objection with ZATCA within the period specified as per the provisions of Tax Dispute and Violation Committee Procedures, and since ZATCA re-assessment decision was issued on 03/06/2021 AD, while Plaintiff objection was on 23/03/2022 AD, the period between the date of ZATCA decision and the date of objection is more than (60) days, whereupon, the contested decision becomes final and unobjectionable as per Article 3.1 of the Tax Dispute and Violation Committee Procedures. As for Plaintiff claim that ZATCA did not notify it of the final re-assessment, we maintain that the re-assessment was communicated to Plaintiff on 03/06/2021 through Plaintiff email registered with ZATCA.

Second: Requests: Based on the above, ZATCA requests the Honorable Committee to rule that the lawsuit is



inadmissible in form for the reasons explained above. ZATCA reserves the right to provide further responses and clarifications until pleadings closing.

On Sunday, 09/10/2022, First Department to Adjudicate Excise Tax Violations and Disputes in Riyadh held its first session via video conference in accordance with the procedures for remote video litigation at 4:30 PM based on Article 15.2 of the Tax Dispute and Violation Committee Procedures issued by Royal Order No. (26040), dated 21/04/1441 AH to consider the case filed by Plaintiff against Defendant.. Having called the parties to the case; appeared (..... nationality), holding National ID No. (...), appeared in his own capacity, and Mr....., (... Mr....., anational, holding National ID No..... appeared as representative of Defendant by virtue of authorization No. On ./08/1442 AH, issued by the Deputy Governor for Legal Affairs. Having asked the parties to the case if they had any other statements, they decided to suffice with their earlier submissions. Accordingly, Department decided to close pleading and adjourn session for deliberation before issuing decision.

Grounds:

Having reviewed Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH , as amended, and its Implementing Regulations issued by Minister of Finance Decision No. (1535) of 11/06/1425 AH , as amended, Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH , as amended, Implementing Regulations of the Law issued by the Decision of Board of Directors of General Authority of Zakat and Income (currently ZATCA) No. (2-3-19) dated 10/09/1440 AH , as amended, and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant laws, regulations and decisions.

In Form: Plaintiff instituted his case moving to cancel Defendant decision regarding the final re-assessment of second, fourth and sixth tax periods of 2020 and first tax period of 2021 and the related late payment fine based on Excise Tax Law and its Implementing Regulations; and since this dispute is one of the tax disputes, it is considered one of the disputes that fall within the jurisdiction of Excise Goods Tax Violations and Disputes Committee pursuant to Royal Order No. (26040) dated 21/04/1441 AH; and since the case was filed by a person with the capacity, and within the period prescribed by law as per Article 57 of Implementing Regulations of the Law, which provided that the calculation of such period begins from the date of delivery of the notice; and since Plaintiff argued that it was not notified of the tax assessment or fines until 01/02/2022 AD; and since ZATCA, which is responsible for notification as per Article 17.3, and also bears the burden of proving receipt of the notice did not prove delivery in a date preceding the date indicated by Plaintiff; and since it is established according to Plaintiff submissions that it has filed the objection via email with ZATCA on 23/03/2022 AD and the case was registered with the Secretariat on 19/07/2022 AD, i.e. before the end of the thirty-day period following the end of the ninety-day period set for objection to ZATCA decision as per Article 2 of the Tax Dispute Violation Committee Procedures, the case is then accepted in form.

On Merits: Having considered the case files and the requests, defenses and pleas made by the parties, it was found that the dispute relates to Plaintiff objection to Defendant final re-assessment of the second, fourth and sixth tax periods of 2020, and the First tax period of 2021 and the related fines. Department concluded that:

First: Tax Differences item: The case files did not include nor did Defendant submit any proof for the occurrence of any of the three cases specified by Article 17.1 of Implementing Regulations of Excise Tax Law, the occurrence of which would activate ZATCA authority to assess the tax due on Excise goods. Moreover, Department found that ZATCA did not comply with the requirements dictated by paragraphs (3) and (4) of Article (17) as to notifying the taxpayer by a written notice of the amount of the tax due, and that the notice includes the grounds relied upon by ZATCA in calculating the amount of the tax due. Since the failure to



comply with these requirements undermines the soundness of the decision and the taxpayer's ability to understand ZATCA assessment and consequently to exercise his right as a taxpayer to accept or object to the assessment; therefore, the tax assessment decision so delivered has to be canceled.

Second: Late Payment Fine: Plaintiff objects to Defendant decision to impose a late payment fine resulting from the re-assessment of the tax periods in question; and since Department concluded in item "First" to cancel the tax differences decision, those late payment fines should be canceled consequently pursuant to Article (22) of Excise Tax law, which states: "whoever who does not pay the tax due within the period specified by the Regulations shall be fined an amount equaling (5%) of the value of unpaid tax, for each month or fraction of month for which the tax was not paid.", Department concludes to cancel the late payment fine.

Decision:

First: To Accept case in form.

Second: Cancel the Defendant's decision regarding the excise tax differences.

Third: Canceling Defendant decision regarding late payment fine.

This decision was issued in presence of both parties. Department set thirty (30) days from date for receiving copy of decision, and may extend delivery date for another (30) days. Parties hereto may request to appeal decision within thirty (30) days from the day following the date specified for its receipt. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.

Appeal Committee:

Appeal Committee ruled to uphold Department decision.



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2022-262)

Delivered in Case No. (E-2022-115761)

Keywords:

Excise Tax - Late Payment Fine - Imposing Late Payment Fines on Notification Date of Payment Invoice Numbers - Tax Assessment - Cancellation of Defendant Decision.

Abstract:

Plaintiff has requested to cancel ZATCA decision regarding imposition of late payment fines for September and October 2021. ZATCA responded that Plaintiff did not pay due tax, resulting in a delay in paying tax during specified dates. Department found that ZATCA imposed late payment fines on the same date it notified Plaintiff of due tax payment invoice numbers, and that Plaintiff paid tax and fines imposed by ZATCA pursuant to tax assessment within specified period. Department ruled to Accepting case in form, and canceling Defendant decision regarding late payment fine. This decision shall be deemed final and enforceable under Article 42 of Tax Dispute and Violation Committee Procedures.

Documents:

- Article 14/1 of [Excise Tax Law promulgated by Royal Decree No. \(M/86\) dated 27/08/1438 AH.](#)
- Articles 17 &18/4 of [Excise Tax Implementing Regulations, Issued by General Authority of Zakat & Tax Board of Directors Resolution No. \(19-3-2\) dated 10/09/1440 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 19/12/2022, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh, established pursuant to Article 67 of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended by Royal Decree No. (13957) dated 26/02/1444 AH, convened a session via video conference as per remote video litigation procedures to consider above-mentioned case filed with General Secretariat of Zakat, Tax and Customs Committees under aforementioned number on 18/04/2022 AD, as it fulfilled established regulatory procedures.

Facts of this case are that Company, with C.R. No. (...), submitted through..., holding National ID No. (...), in its capacity as Plaintiff attorney under power of attorney No. (...), a statement of claim, in which Plaintiff objected to Defendant decisions regarding imposition of a late payment fine for September and October 2021, and requested that Defendant decisions be canceled.

Having presented statement of claims to Defendant, it responded as follows: Late payment fine was imposed for the months following tax period, as Plaintiff did not pay due tax as set



out in Article 17 of Excise Tax Implementing Regulations, resulting in a delay in payment of due tax during prescribed dates.

On Monday, 19/12/2022, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh convened a session via video conference in accordance with remote video litigation procedures at 5 p.m. based on Article 15.2 of Tax Dispute and Violation Committee Procedures, promulgated by Royal Decree No: (26040), dated 21/04/1441 AH to consider the case filed by Plaintiff against Defendant. When Parties to case were called, (... (..... nationality), holding National ID No. (...), in his capacity as Plaintiff attorney under power of attorney No. (...), and in presence of (... Mr....., anational, holding National ID No..... appeared as representative of Defendant by virtue of authorization No. dated..., issued by Deputy Governor for Legal Affairs. After hearing arguments from both parties, Department decided to adjourn session for deliberation before issuing decision.

Grounds:

Having reviewed Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, Implementing Regulations thereof issued by Minister of Finance Decision No. (1535) dated 11/06/1425 AH, as amended, and based on Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH, as amended, and Excise Tax Implementing Regulation Issued by General Authority of Zakat & Tax Board of Directors Resolution No. (19-3-2) dated 10/09/1440 AH, as amended, and based on Tax Dispute and Violation Committee Procedures promulgated by Royal Decree No. (26040) dated 11/06/1441 AH, and relevant laws, regulations and decisions.

In Form: Plaintiff filed a case seeking cancellation of Defendant decision regarding imposition of a late payment fine for September and October 2021, based on Excise Tax Law and its Implementing Regulations, this case falls within jurisdiction of Committee for Resolution of Excise Tax Violations and Disputes, pursuant to Royal Decree No. (26040) dated 21/04/1441 AH. Additionally, this case was filed by a person with legal capacity, and within legal prescribed period, which requires Department to accept case in form.

On Merits: Department reviewed case files, including requests, defenses and pleadings submitted by parties thereto, and since dispute centers on Plaintiff objection to Defendant decisions regarding imposition of a late payment fine for September and October 2021, and Plaintiff indicated that provisions of article 14.1 of Law do not apply, due to absence of a tax return on Defendant website; And since Defendant (ZATCA) did not provide Plaintiff with due tax payment invoice numbers for the tax period subject matter of case until 01/12/2021, and Plaintiff communicated with Defendant in this regard on 04/10/2021, but the delay was on the part of Defendant (ZATCA) and Plaintiff was not allowed to submit its tax returns through its portal; and since it relates to a due tax imposed by Defendant on 01/12/2021, pursuant to a tax assessment resulting from its exercise of competence stipulated in Article 17 of Regulations, which states: “ZATCA shall calculate Tax Due amount on Excise Goods, in accordance with provisions of Regulations; if taxpayer due...”. It was established that Defendant (ZATCA) imposed late payment fine on the same date of its notification to Plaintiff of tax due payment invoice numbers. Since Plaintiff had paid tax and fine imposed by Defendant under tax assessment within the period specified in accordance with Article 18.4 of Regulations, Department shall, based on the aforementioned, cancel the fine subject matter of case.

Decision:

First: To Accept case in form.

Second: Cancellation of Defendant decision regarding late payment fine.



This decision was issued in presence of both parties. Department set thirty (30) days from date for receiving copy of decision, and may extend delivery date for another (30) days. Parties hereto may request to appeal decision within thirty (30) days from the day following the date specified for its receipt. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof. Date of uploading decision to General Secretariat electronic system shall be deemed the date of decision delivery.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2022-266)

Delivered in Case No. (E-2022-115333)

Keywords:

Excise Tax - Tax Reassessment - Sweetened Beverages - Items Not Subject to Excise Tax - Medical/Nutritional Medical Products - Late Payment Fine - Illegality of Calculating Late Payment Fine.

Abstract:

Plaintiff requests to cancel ZATCA decision regarding re-assessment for the sixth tax period of 2019 until the fourth period of 2021, including associated fines. ZATCA countered that the excise tax on imported items (sweetened beverages) were not properly imposed, as Plaintiff has previously declared these items to Customs as exempt from excise tax. Furthermore, the items claimed by Plaintiff for treatment from medical conditions and for patients with diabetes and obesity, do not fall within defined items, and lacked certification from Saudi Food and Drug Authority. Therefore, Department determined the following regarding excise tax reassessment clause: Scientific studies provided by Plaintiff failed to identify the medical or nutritional benefits of particular imported products and therefore cannot be invoked. Plaintiff should have submitted a laboratory report independent of supplying Company and certified in Kingdom to substantiate its claim. With regard to the "Late Payment Fine" item: Illegality of calculating late payment fine for any period prior to end of fifteenth day after notification of payment. Department ruled to Dismissing Plaintiff case regarding excise tax re-assessment and amending Defendant decision regarding imposition of late payment fine, whereby late payment fine shall be calculated from expiration of 15 days from date of notifying Plaintiff of excise tax re-assessment decision. Decision shall be considered final and enforceable under article 42 of Tax Dispute and Violation Committee Procedures.

Documents:

- Article 11/1 of [Common Excise Tax Agreement of Gulf Cooperation Council \(GCC\) States, promulgated by Royal Decree No. M/51 dated 05/03/1438 AH.](#)
- Article 22 of [Excise Tax Law promulgated by Royal Decree No. M/86 dated 27/08/1438 AH.](#)
- Articles 2/1, (15/1, 2), (17/1, 6) & (18/4) of [Excise Tax Implementing Regulations issued by General Authority of Zakat & Tax Board of Directors Resolution No. \(19-3-2\) dated 10/09/1440 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 01/01/2023, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh, formed pursuant to Article 67 of Income Tax Law promulgated by Royal



Decree No. (M/1) of 15/01/1425 AH, as amended, established by Royal Decree No. (13957) dated 26/02/1444 AH, convened a session via video conference, in accordance with remote video litigation procedures, to consider the above-mentioned case filed with General Secretariat of Zakat, Tax and Customs Committees under aforementioned number on 13/04/2022 AD, as it fulfilled established regulatory procedures.

Facts of this case are as follows: Mr./ ..., holding National ID No. (...), in its capacity as owner of ... Organization, with C.R. No. (...), submitted a statement of claim that challenged Defendant decisions regarding-assessment for the sixth tax period of 2019 until the fourth period of 2021, including associated fines. Plaintiff requested that Defendant decision be canceled.

Having presented statement of claims to Defendant, it responded as follows: ZATCA found that the excise tax on imported items (sweetened beverages) were not properly imposed, as Plaintiff has previously declared these items to Customs as exempt from excise tax. Furthermore, ZATCA contacted Plaintiff requesting evidence that products exempted from excise tax and undisclosed during their import were intended for treatment of medical conditions such as diabetes and obesity. However, Plaintiff failed to provide proof of its claim. These items were subsequently subjected to a 50% excise tax. Defendant (ZATCA) referenced a translated statement from the exporting Company from which Plaintiff imports its products, which confirmed addition of sugar and sweeteners to products imported by Plaintiff into Kingdom. Relevant laws, regulations and decisions did not stipulate exemption from excise tax for sweetened beverages containing added sugar or sweetener. Instead, provision broadly include all items containing sugar or sweeteners within scope of excise tax. Exempted goods, as stated in Ministerial Decision No. (SA/1/4/2/19/42) dated 09/05/2019, contained in Gulf Technical Regulation, are foods with special nutritional use, which have been defined as: "Products processed or formulated to meet specific nutritional needs, arising from specific physical or physiological conditions, diseases and disorders and which are clearly different from ordinary products, if any." Gulf Technical Regulation No. GSO 31-1366 defines foods for special medical use as: "It is a group of special nutritional uses, specially made for nutritional use for patients, which are used only under medical supervision, intended for total or partial nutrition of patients who have a limited or have no ability to eat, digest, absorb or metabolize regular food or a particular component thereof, or who have needs for medically prescribed nutrients, which cannot be met by modification of ordinary food...". ZATCA found that items alleged by Plaintiff to be used for treatment of medical conditions, such as diabetes and obesity, do not fall within defined items, and lacked certification from Saudi Food and Drug Authority.

The Plaintiff submitted a replication, in which she stated: It is unimaginable that sugar and sweeteners exist, but sugar substitute has been found, which adds taste and texture without the associated health risks caused by sugar and sweeteners. Studies to be attached prove that such substitutes contribute in treatment processes. (Ideal Protein) syrup is a sugar-free, weight-loss diet component, and is used to treat diabetes, particularly type 2. Plaintiff highlighted product effects on diabetes, citing an experiment conducted on a number of patients, as well as scientific studies attached. Plaintiff explained that its products are intended for medical purposes, including obese and diabetic patients and do not constitute regular sweetened beverages.

On Sunday, 01/01/2023, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh convened a session via video conference in accordance with remote video litigation procedures, based on Article 15.2 of Tax Dispute and Violation Committee Procedures, promulgated by Royal Decree No: (26040), dated 21/04/1441 AH, to consider case filed by Plaintiff against Defendant. When parties to case were called, Plaintiff or its representative did not appear despite being notified, whereas ... appeared (... Mr....., anational, holding National ID No..... appeared as representative of Defendant by



virtue of authorization No. dated 17/08/1442 AH, issued by Deputy Governor for Legal Affairs, Department decided to adjourn session for deliberation.

Grounds:

Having reviewed Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, Implementing Regulations thereof issued by Minister of Finance Decision No. (1535) dated 11/06/1425 AH, as amended, and based on Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH, as amended, and Excise Tax Implementing Regulation Issued by General Authority of Zakat & Tax Board of Directors Resolution No. (19-3-2) dated 10/09/1440 AH, as amended, and based on Tax Dispute and Violation Committee Procedures promulgated by Royal Decree No. (26040) dated 11/06/1441 AH, and relevant laws, regulations and decisions.

In Form: Plaintiff filed a case seeking cancellation of Defendant decision regarding reassessment of excise taxes for the period from sixth tax period of 2019 until fourth period of 2021, and since this is a tax dispute, it falls within jurisdiction of Committee for Resolution of Excise Goods Tax Violations and Disputes, pursuant to Royal Decree No. (26040) dated 21/04/1441 AH. Additionally, case was filed by a person with legal capacity, and within prescribed legal period, which requires Department to accept case in form.

On Merits: Department reviewed case files, including requests, defenses and pleadings submitted by parties thereto, and since dispute centers on Plaintiff objection to Defendant decisions regarding reassessment of excise tax from sixth tax period of 2019 until fourth period of 2021, Department found the following:

First: Excise Tax Reassessment Item: It is clear that dispute centers on Plaintiff objection to Defendant procedure of reassessing tax period in question and imposing excise tax on imported items. Article 2.1 of Excise Tax Implementing Regulations provides that: “Excise Tax shall be imposed on the following goods: A. Tobacco Products. B. Soft Drinks. C. Energy Drinks. D. Sweetened Drinks. E. Electronic devices and tools used for smoking, vaping and alike. F. Liquids consumed in electronic devices and tools used for smoking, vaping and alike”. Article 11.1 of Common Agreement also provides that: “1. Importer shall be required to declare any Due Tax upon import in accordance with Common Customs Law provisions. Each Member State shall determine the payment procedures”. Article 15.2 of Excise Tax Implementing Regulations provides that: “For the purposes of the first paragraph of this Article, Importer shall provide the following information to Saudi Customs: A. Type of Excise Goods intended to be released. b. Retail sales price of these Excise Goods. C. Any other information required by Saudi Customs. Article 17.1 of Excise Tax Implementing Regulations provides that: “ZATCA shall calculate Tax Due amount on Excise Goods, in accordance with Regulations provisions; if taxpayer: A. Fails to comply with conditions to file an import declaration or submitted incorrect import declaration. B. Fails to file an Excise Tax Return or submitted an incorrect Excise Tax Return. C. Is not registered for Excise Tax purposes.” Article 17.6 of Excise Tax Implementing Regulations provides that: “ZATCA shall notify taxpayer of the tax due amount in writing. The written notification shall include calculation basis used.” Department reviewed the scientific studies submitted by Plaintiff regarding the impact of using imported products. However, studies fail to identify the effect of imported items as medical or nutritional products. Instead, they focused on an integrated diet (low-carbohydrate), and its indirect therapeutic effect, without specifically identifying the effects of a particular product. Consequently, attached studies cannot be used to decide on exemption of products from tax and their medical classification, particularly since Plaintiff did not submit product classification statement issued from Saudi Food and Drug Authority. Supplying Company statement and manufacturer laboratory report submitted by Plaintiff, along with analysis of 11 products revealed that sugar in products was naturally existing in concentrated milk protein, or derived from pureed and dried fruit. Some products contained added sugars



from natural flavors, corn sugar, and sugar cane, others were sugar-free. Given the inability to rely on a manufacturer-issued, non-Saudi accredited laboratory report regarding added sugars, and since Plaintiff had failed to submit an independent, Kingdom-certified laboratory report substantiating its claim, Department decided to dismiss Plaintiff case regarding excise tax reassessment.

Second: Late Payment Fine: Plaintiff dispute centers on objection to imposition of late payment fine due to reassessment of excise tax in question. Article 22 of Excise Tax Law provides that: “Anyone who fails to pay tax due within period prescribed by Regulations shall be punished by a fine equivalent to 5% of the value of unpaid tax for each month or part thereof for which the tax has not been paid.” Article 18.4 of Excise Tax Implementing Regulations (before the last amendment) specified that period in the following statement: “Due tax imposed by virtue of a tax assessment shall be paid to ZATCA within a period of (15) days from the date taxpayer is notified by, in accordance with Article 17 of Regulations.” Therefore, Department concludes that calculation of late payment fine for any period before the end of fifteenth day after notification of payment is illegal.

Decision:

First: Dismissing Plaintiff claim regarding excise tax reassessment

Second: Amending Defendant decision regarding imposition of late payment fine, so that late payment fine shall be calculated after expiry of 15 days from date of notifying Plaintiff of excise tax reassessment decision.

This decision was made in presence of both parties, in accordance with provisions of Article (56) of Law of Procedure Before Sharia Courts. Department has set a period of thirty (30) days for receiving a copy of decision, and may extend delivery date for another thirty (30) days. This decision shall be final and enforceable in accordance with provisions of Article 42 of Tax Dispute and Violation Committee Procedures. Date of uploading decision to General Secretariat electronic system shall be deemed the date of decision delivery.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2022-267)

Delivered in Case No. (E-89931-2022)

Keywords:

Excise Tax - Tax Reassessment - Standard Prices - Calculation of Excise Tax on Products - Late Payment Fine - "Related Matters Shall Have the Same Force and Effect" - Revoking of Defendant Decision.

Abstract:

Plaintiff filed a case seeking cancellation of ZATCA decision regarding reassessment of excise tax for the period from 2019, including associated fines. ZATCA responded that decision is presumed to be valid and sound, and whoever claims otherwise shall provide proof supporting his claims. ZATCA has adjusted selling prices according to standard prices, in accordance with provisions of Common Agreement and its Implementing Regulations. The following was established to Department regarding calculation of excise tax on products (soft drinks): Plaintiff paid a fixed fee (soft drink tax), and Defendant stated that the basis for tax reassessment was product standard price, being higher than retail price set by Plaintiff. Defendant responded negatively when asked whether it had informed Plaintiff about standard prices or published them prior to date of import. Regarding late payment fine clause: Related Matters Shall Have the Same Force and Effect. Department ruled to Canceling Defendant decision regarding calculation of excise tax on products (soft drinks) and late payment fine. Decision shall be deemed final and enforceable under Article 42 of Tax Dispute and Violation Committee Procedures.

Documents:

- Article 6/2 of [Common Excise Tax Agreement of Gulf Cooperation Council \(GCC\) States, promulgated by Royal Decree No. M/51 dated 05/03/1438 AH.](#)
- Article 1 of [Excise Tax Implementing Regulations, promulgated by General Authority of Zakat & Tax Board of Directors Resolution No. \(19-3-2\) dated 10/09/1440 AH.](#)
- "Related Matters Shall Have the Same Force and Effect".

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 27/12/2022, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh, formed pursuant to Article 67 of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended by Royal Decree No. (13957) dated 26/02/1444 AH, convened a session via video conference in accordance with remote video litigation procedures to consider above-mentioned case filed with General Secretariat of Zakat, Tax and Customs Committees under aforementioned number on 03/01/2022 AD, as it fulfilled established regulatory procedures. .



Facts of this case are as follows: Mr.:, holding National ID No. (...), in its capacity as owner of ... organization, with C.R. No. (...), submitted a statement of claim objecting Defendant decisions regarding reassessment of excise tax for the third period of 2019, including associated fines, and requesting cancellation of Defendant decisions.

Having presented statement of claims to Defendant, it responded as follows: Decision is presumed to be valid and sound, and whoever claims otherwise shall provide proof supporting his claims. ZATCA adjusted the selling prices according to the standard prices in accordance with the provisions of Article 6 of the Common Agreement and Article 8 of Implementing Regulations and based on provisions of Article 17.29 of Implementing Regulations. Accordingly, ZATCA upholds the validity of its action. Requests: ZATCA requests the Honorable Committee to dismiss the case in form for the reasons stated above.

On Tuesday, 27/12/202, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh convened a session via video conference in accordance with the remote video litigation procedures at 6 p.m. based on Article 15.2 of Tax Dispute and Violation Committee Procedures, promulgated by Royal Decree No: (26040), dated 21/04/1441 AH, to consider case filed by Plaintiff against Defendant. When parties to case were called, ... appeared, (..... nationality), holding National ID No. (...), appeared in his own capacity, and Mr....., (... Mr....., anational, holding National ID No..... appeared as representative of Defendant by virtue of authorization No. On ./08/1442 AH, issued by the Deputy Governor for Legal Affairs. After hearing arguments from both parties, and inquiring about legal grounds for Defendant recalculation of excise tax on imported soft drinks subject matter of this case, Defendant representative confirmed that based on Article (17) of Excise Tax Implementing Regulations, tax may be recalculated based on standard price, which is higher than retail price. When questioned about prior notification of standard prices before tax return submission, Defendant confirmed that he received no notification. Consequently, Department decided to adjourn session for deliberation.

Grounds:

Having reviewed Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended; Implementing Regulations thereof issued by Minister of Finance Decision No. (1535) dated 11/06/1425 AH, as amended; based on Excise Tax promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH, as amended; and Excise Tax Implementing Regulation Issued by General Authority of Zakat & Tax Board of Directors Resolution No. (19-3-2) dated 10/09/1440 AH, as amended, and based on Tax Dispute and Violation Committee Procedures promulgated by Royal Decree No. (26040) dated 11/06/1441 AH, and relevant laws, regulations and decisions.

In Form: Plaintiff filed a case seeking cancellation of Defendant decision regarding reassessment of excise taxes for third period of 2019, including associated fines, and since this is a tax dispute, it is considered to be within jurisdiction of Committee for Resolution of Excise Tax Violations and Disputes, pursuant to Royal Decree No. (26040) dated 21/04/1441 AH, and since the case was filed by a person with legal capacity, and within legally prescribed period, Department is required to accept case in form.

On Merits: Department reviewed case files, including requests, defenses and pleadings submitted by parties thereto, and since dispute centers on Plaintiff objection to Defendant decisions regarding reassessment of excise tax from the third period of 2019 including associated fines. Therefore, Department found that:

First: Calculation of Excise Tax on Products: (Soft Drinks): It is clear that the dispute lies in Plaintiff objection to Defendant (ZATCA) procedure regarding tax reassessment for the third tax period of 2019, as the tax base is defined in Article 1 of Excise Tax Implementing



Regulations as (value of Excise Good on which Tax is imposed, equals to the retail sales price determined by the importer or producer, or the standard price agreed on these goods in accordance with the Agreement, whichever is higher; exclusive of the Tax due and VAT), as well as Article 6.2 of the Common Excise Tax Agreement of Gulf Cooperation Council (GCC) States, which stipulates that “The value on which Tax shall be levied on the remaining Excise Goods shall be determined on the basis of their retail sale price provided by the importer or producer of the Excise Goods, or in accordance with a standard price list to be periodically agreed upon by the GCC Tax Administrations, whichever is higher”. It is evident to Department, under the customs declaration included in the case file, that Plaintiff paid a fixed fee (soft drink tax) in the amount of SAR 25,440, and since Defendant stated that the basis for tax reassessment is the product’s standard price for being higher than the retail price specified by Plaintiff. Since Defendant respond categorically in the negative when asked whether it informed Plaintiff about the standard prices or published the same prior to the date of import, and since it is not right to enforce a legal effect on the taxpayers regarding a matter that they were not notified of or published in accordance with the established procedure for publishing decisions, which led Department to cancel Defendant decision regarding reassessment for the third tax period of 2019.

Second: Late Payment Fine: It is evident that Plaintiff objection to the imposition of late payment fine resulting from Defendant decision to amend Plaintiff tax return subject matter of the case, and since Department has established in Clause (first) cancellation of Defendant decision, and since late payment fine has resulted therefrom, then related matters shall have the same force and effect, with which Department deems necessary to cancel Defendant decision.

Decision:

First: Abolish Defendant decision regarding the calculation of excise tax on products (soft drinks).

Second: Abolish Defendant decision regarding the late payment fine.

This decision was issued in presence of both parties. Department set thirty (30) days from date for receiving copy of decision, and may extend delivery date for another (30) days. Parties hereto may request to appeal decision within thirty (30) days from the day following the date specified for its receipt. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof. Date of uploading decision to General Secretariat electronic system shall be deemed the date of decision delivery.

May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2022-280)
Delivered in Case No. (E-2022-115203)

Keywords:

Excise Tax - Tax Reassessment - Sweetened Beverages - Late Payment Fine - "Related Matters Shall Have the Same Force and Effect".

Abstract:

Plaintiff request to quash ZATCA decision on reassessment for the (sixth) tax period of 2019, and the resulting fines. ZATCA replied that it was found that Plaintiff was importing the disputed goods under an item not subject to excise tax. ZATCA imposed excise tax on disputed items, being classified under definition of sweetened beverages due to their sweeteners content. Regarding late payment fine: Due to Plaintiff failure to pay due tax during the legal period, regarding the item of calculating excise tax on product (French coffee), Department found that: It is confirmed that no added sugar exists in disputed item (French coffee). With regard to the "Late Payment Fine" item: Related Matters Shall Have the Same Force and Effect. Department ruled to Cancel Defendant decision regarding the calculation of excise tax on product (French coffee), and cancel Defendant decision regarding late payment fine. This decision shall be deemed final and enforceable under Article 42 of Tax Dispute and Violation Committee Procedures.

Documents:

- Article 11/1 of [Common Excise Tax Agreement of Gulf Cooperation Council \(GCC\) States, promulgated by Royal Decree No. M/51 dated 05/03/1438 AH.](#)
- Article 22 of [Excise Tax Law promulgated by Royal Decree No. M/86 dated 27/08/1438 AH.](#)
- Article 15/1 of [Excise Tax Implementing Regulations, Issued by The General Authority of Zakat & Tax Board of Directors Resolution No. \(19-3-2\) dated 10/09/1440 AH.](#)
- "Related Matters Shall Have the Same Force and Effect"

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 26/12/2022, First Department to Adjudicate Excise Tax Violations and Disputes in Riyadh, formed pursuant to Article 67 of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, established by Royal Decree No. (13957) dated 26/02/1444 AH, convened a session via video conference in accordance with the remote video litigation procedures to consider the above-mentioned case. Since the case fulfilled the established regulatory procedures, it was filed with General Secretariat of Zakat, Tax and Customs Committees under the aforementioned number and on 12/04/2022 AD.



Facts of this case are as follows: Company, with C.R. No. (...), has submitted through..., holder of national ID (...), in her capacity as Plaintiff attorney under power of attorney no. (...), a statement of claim objecting the decisions of Defendant regarding reassessment of the (sixth) tax period of 2019 including associated fines, and requested that Defendant decisions be canceled.

Having presented statement of claims to Defendant, it responded as follows: ZATCA taxed the disputed goods and calculated the percentage prescribed by law in accordance with Article 3 of the Common Excise Tax Agreement and Article 2 and Article 3.4 of Excise Tax Implementing Regulations. Accordingly, ZATCA taxed the disputed goods and calculated the percentage prescribed by law in accordance with the provisions of the above-mentioned articles and Article 4 of the Common Excise Tax Agreement, after it was established that Plaintiff was importing the disputed goods under an item not subject to excise tax. ZATCA imposed excise tax on disputed items, being classified under definition of sweetened beverages due to their sweeteners content.

Accordingly, considering sweetened beverages in accordance with the definition approved by the GCC Financial and Economic Cooperation Committee, ZATCA confirms that Plaintiff disputed product is in conformity with the general definition of sweetened beverages. Based on the foregoing, in accordance with Article 4 of the Common Excise Tax Agreement and Article 4 of Excise Tax Implementing Regulations, ZATCA has calculated the tax due in accordance with the tax base of disputed goods. Therefore, ZATCA maintains the validity of its procedure in cases referred to in the above statement. As for the late payment fine, in accordance with Article 22 of Excise Tax Law, and due to Plaintiff's failure to pay the tax due during the statutory period, ZATCA upholds the validity of imposing the fine subject matter of the case. Requests: ZATCA requests Honorable Committee to dismiss case for the reasons set out above.

The Plaintiff submitted a replication, in which she stated: 1. Flaws in reasoning that French coffee is sweetened contrary to the truth: It confirms Defendant mistake and that French coffee is not sweetened. We used the word glucose as a sweetener, and on the same card there is what definitely confirms that the coffee is sugar-free, the preparation method (sugar is added as desired), is this consistent with the fact that the product is sweetened. It confirms that the French coffee powder is sugar-free and sugar is added when preparing. Plaintiff mistake was to mention glucose among the ingredients and not clarify that it is natural and not added. The glucose in coffee is the natural proportion found in the coffee bean as a plant. Plaintiff presented laboratory test results that confirm the same. 2. Submitting Saudi Food and Drug Authority statement: The memorandum submitted by Defendant stated that Plaintiff did not submit the required statement, which is contrary to the truth. Plaintiff submitted the response of the Saudi Food and Drug Authority on 07/03/2022, submitted an official letter from the Public Authority for Food and Nutrition in Kuwait, the producer State, confirming that the product was free of sweeteners, and submitted an official letter from the producing factory confirming that no sweeteners had been added to French coffee, and submitted laboratory test results issued by several GCC accredited laboratories confirming that French coffee is sugar-free, and submitted the result of a test by Saudi Ajal Laboratories accredited to the Saudi Food and Drug Authority, confirming that the product was sugar-free. Requests: Accepting case in the form, and canceling ZATCA decision to impose excise tax on French coffee including its consequences.

On Monday, 26/12/2022, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh convened a session via video conference in accordance with the remote video litigation procedures at 6:15 p.m. based on Article 15.2) of Tax Dispute and Violation Committee Procedures, promulgated by Royal Decree No: (26040) dated 21/04/1441 AH to consider the case filed by Plaintiff against Defendant, and by calling the parties to the case,appeared (..... nationality), holding National ID No. (...), in her capacity as Plaintiff



attorney under power of attorney no. (...), and appeared, (..... nationality), holder of national ID (...), as Defendant representative, under Letter of Authorization no (...) On ./08/1442 AH, issued by the Deputy Governor for Legal Affairs. After hearing arguments from both parties, Department decided to adjourn the session for deliberation.

Grounds:

Having reviewed Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance Decision No. (1535) of 11/06/1425 AH, as amended, Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH, as amended, Implementing Regulations of the Law issued by the Decision of Board of Directors of General Authority of Zakat and Income (currently ZATCA) No. (2-3-19) dated 10/09/1440 AH, as amended, and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant laws, regulations and decisions.

In Form: Since Plaintiff filed a case requesting that Defendant decision regarding reassessment of excise tax for sixth tax period of 2019 be canceled, including associated fines, and since this is a tax dispute, it is considered to be within the jurisdiction of the Committee for Resolution of Excise Tax Violations and Disputes, pursuant to Royal Decree No. (26040) dated 21/04/1441 AH, and since the case was filed by a person with capacity, and within the legal prescribed period, which requires Department to accept the case in form.

On Merits: Department reviewed case files, including requests, defenses and pleadings submitted by parties thereto, and since dispute centers on Plaintiff objection to Defendant decisions regarding reassessment of excise tax from sixth tax period of 2019 including associated fines. Therefore, Department found that:

First: Calculating Excise Tax on Product (French Coffee): It is clear that the dispute lies in Plaintiff objection to Defendant reassessment of the tax period subject matter of the case, as a result of Defendant subjecting (French coffee) to excise tax, as Article 11.1 of the Common Agreement provides that: “1. “1. Importer shall be required to declare any Due Tax upon import in accordance with provisions of Common Customs Law. Each Member State shall determine payment procedures”. Article 15.2 of Excise Tax Implementing Regulations provides that: “Excise Tax shall be imposed on the following goods: A. Tobacco Products. B. Soft Drinks. C. Energy Drinks. D. Sweetened Drinks. E. Electronic devices and tools used for smoking, vaping and alike. F. Liquids consumed in electronic devices and tools used for smoking, vaping and alike”. Article 15.1 of Excise Tax Implementing Regulations provides that: “In case of importing Excise goods and offering them for consumption, amount of Tax Due shall be calculated by Saudi Customs based on Tax Base of these goods and in accordance with procedures specified in Common Customs Law”. Based on the foregoing, and after Department reviewed Plaintiff attachments, and since it was clear from laboratory reports analyzing the sample of the item (French coffee), which indicated the lack of added sugar to coffee, and report of Saudi Ajal laboratories (Saudi agal), which indicated the presence of percentages of sweeteners. Plaintiff explained the same in its statement that sweeteners are present in the nature of coffee bean and are not added. This was supported by the analysis result that there was no added sucrose sugar to the disputed item. Since Defendant argued the presence of (glucose as a sweetener) phrase on the product card, submitted laboratory reports denied the validity of the same. Defendant argument cannot be relied upon against the approved reports. Since it has been proven that there was no added sugar in the disputed item (French coffee), Department concludes to accept Plaintiff case and cancel Defendant decision.

Second: Late Payment Fine: Plaintiff objection to the imposition of late payment fine resulting from the reassessment of the (sixth) tax period of 2019 is clear. Article 22 of Excise Tax Law provides that: “Anyone who fails to pay the tax due within the period prescribed by Regulations shall be punished by a fine equivalent to 5% of the value of unpaid tax for each



month or part thereof for which the tax has not been paid.” In Clause (first), Department concludes to cancel Defendant decision. Since the late payment fine resulted from the same, related matters shall have the same force and effect. Therefore, Department repeals the fine subject matter if the case.

Decision:

First: Abolish Defendant decision regarding the calculation of excise tax on the product of French coffee.

Second: Abolish Defendant decision regarding imposing a late payment fine.

This decision was issued in presence of both parties. Department set thirty (30) days from date for receiving copy of decision, and may extend delivery date for another (30) days. Parties hereto may request to appeal decision within thirty (30) days from the day following the date specified for its receipt. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof. Date of uploading decision to General Secretariat electronic system shall be deemed the date of decision delivery.

May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).



Adjudication Committee

First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh

Decision No. (ER-2023-277)

Delivered in Case No. (E-2022-116491)

Keywords:

Excise Tax - Tax Reassessment - Statutory Period - Prescription - Mechanism for Calculating Tax Differences - Late Payment Fine - "Related Matters Shall Have the Same Force and Effect".

Abstract:

Plaintiff filed a case seeking cancellation of ZATCA decision regarding reassessment of excise tax for the sixth tax period of 2017 and first period of 2018, including associated fines. ZATCA argued that Plaintiff failed to submit its objection to ZATCA within statutory timeframe; therefore, ZATCA decision cannot be disputed for being time-barred. Regarding the tax differences item, it is confirmed to Department that: Defendant failed to explain mechanism of its calculation of tax differences and the grounds on which it relied to reassess them. With regard to the "Late Payment Fine" item: Related Matters Shall Have the Same Force and Effect. Department ruled to Accept case in form, and cancel Defendant decision regarding excise tax reassessment and cancel late payment fine. This decision shall be deemed final and enforceable under Article 42 of Tax Dispute and Violation Committee Procedures.

Documents:

- Article 11/1 of [Common Excise Tax Agreement of Gulf Cooperation Council \(GCC\) States, by Royal Decree No. M/51 dated 05/03/1438 AH.](#)
- Article 22 of [Excise Tax Law promulgated by Royal Decree No. M/86 dated 27/08/1438 AH.](#)
- Articles 2/1, 15/1 of [Excise Tax Implementing Regulations, Issued by General Authority of Zakat & Tax Board of Directors Resolution No.\(2/ 1\) 19-3-2\) dated 10/09/1440 AH.](#)
- "Related Matters Shall Have the Same Force and Effect".

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 01/01/2023, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh, formed pursuant to Article 67 of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, established by Royal Decree No. (13957) dated 26/02/1444 AH, convened a session via video conference, in accordance with remote video litigation procedures, to consider the above-mentioned case filed with General Secretariat of Zakat, Tax and Customs Committees under aforementioned number on 24/04/2022 AD, as it fulfilled established regulatory procedures.

Facts of this case are as follows: Mr. ..., holder of national ID (...), in his capacity as owner of ... organization, C.R. No. (...), submitted a statement of claim, in objecting Defendant decision



regarding re-assessment for sixth tax period of 2017 until first period of 2018, and associated fines, and requesting its cancellation.

Having presented statement of claims to Defendant, it responded as follows: We inform Honorable Committee that Plaintiff did not file its objection to ZATCA within statutory timeframe specified in Tax Dispute and Violation Committee Procedures, in accordance with Article 2 of Committee Procedures. ZATCA decision on taxpayer claim for tax dues was issued on 09/06/2021 AD, while Plaintiff objection was filed on 06/02/2022 AD, so the difference in the number of days between ZATCA decision and date of objection is more than 60 days. Therefore, decision cannot be disputed for being time-barred and is not subject to appeal, in accordance with Article 3.1 of Committee Procedures.

On Sunday, 01/01/2023, First Department to Adjudicate Selective Goods Tax Violations and Disputes in Riyadh held its session via video conference in accordance with remote video litigation procedures, based on Article 15.2 of Tax Dispute and Violation Committee Procedures, promulgated by Royal Decree No: (26040), dated 21/04/1441 AH to consider the case filed by Plaintiff against Defendant. When Parties to case were called, (... Nationality), holding National ID No.., appointed under power of attorney No....., and Mr. appeared (... Mr....., anational, holding National ID No..... appeared as representative of Defendant by virtue of authorization No. dated....., issued by Deputy Governor for Legal Affairs. After hearing arguments from both parties, Department decided to adjourn the session for deliberation.

Grounds:

Having reviewed Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, Implementing Regulations thereof issued by Minister of Finance Decision No. (1535) dated 11/06/1425 AH, as amended, and based on Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH, as amended, and Excise Tax Implementing Regulation Issued by General Authority of Zakat & Tax Board of Directors Resolution No. (19-3-2) dated 10/09/1440 AH, as amended, and based on Tax Dispute and Violation Committee Procedures promulgated by Royal Decree No. (26040) dated 11/06/1441 AH, and relevant laws, regulations and decisions.

In Form: Plaintiff filed a case seeking cancellation of Defendant decision regarding reassessment of excise taxes from sixth tax period of 2017 and first period of 2018, including associated fines. Since it is a tax dispute, it is considered to be within jurisdiction of Committee for Resolution of Excise Tax Violations and Disputes, pursuant to Royal Decree No. (26040) dated 21/04/1441 AH, and since case was filed by a person with legal capacity, and since it is established according to facts and documents of the case that the commercial activity subject to assessment relates to a de-listed enterprise on 22/07/1439 AH, corresponding to 08/04/2018 AD, which is before the date of assessment. In addition, Defendant did not provide evidence to the contrary, which is Plaintiff lack of knowledge of the decision issued by it so that the statutory periods are valid against him, especially since the assessment is directed to a non-taxpayer under the disputed assessment, which is what the Appeal Committees for Income Tax Violations and Disputes have settled on in their decisions, such as Decision No. (IR-2021-313) dated 26/10/2021, and Decision No. (IR-2021-412) dated 12/12/2021, which require Department to accept the case in form.

On Merits: Department perused the case files and the requests, defenses and pleas entered by parties thereto, and since the dispute lies in Plaintiff objection to Defendant's decisions regarding the reassessment of the sixth tax period of 2017 and the first period of 2018, including associated fines. Therefore, Department found that:

First: Tax Differences Item: It is evident that the dispute lies in Plaintiff objection to Defendant action on the reassessment of sixth tax period of 2017 and the first period of 2018, together with the resulting imposition of tax differences. Article 11.1 of the Common



Agreement provides that: “1. Importer shall be required to declare any Due Tax upon import in accordance with Common Customs Law provisions. Each Member State shall determine the payment procedures”. Article 2.1 of Excise Tax Implementing Regulations provides that: “Excise Tax shall be imposed on the following goods: A. Tobacco Products. B. Soft Drinks. C. Energy Drinks. D. Sweetened Drinks. E. Electronic devices and tools used for smoking, vaping and alike. F. Liquids consumed in electronic devices and tools used for smoking, vaping and alike”. Article 15.1 of Excise Tax Implementing Regulations provides that: “In case of importing Excise goods and offering them for consumption, amount of Tax Due shall be calculated by Saudi Customs based on Tax Base of these goods and in accordance with procedures specified in Common Customs Law”. Since Defendant did not explain the mechanism of its calculation of tax differences and the grounds on which it relied to reassess the same, Department concludes to cancel Defendant's decision.

Second: Late Payment Fine: Plaintiff objection to the imposition of late payment fine resulting from the reassessment of the sixth tax period of 2017 and the first period of 2018 is clear. Article 22 of Excise Tax Law provides that: “Anyone who fails to pay the tax due within the period prescribed by the Regulations shall be penalized by a fine equivalent to 5% of the value of unpaid tax for each month or part thereof for which the tax has not been paid.” In Clause (first), Department concludes to cancel Defendant decision. Since the late payment fine resulted from the same, related matters shall have the same force and effect. Therefore, Department cancels the fine subject matter if the case.

Decision:

First: To Accept case in form.

Second: Abolish Defendant decision regarding the reassessment of excise tax.

Third: Remove the late payment fine.

This decision was issued in presence of both parties. Department set thirty days as the date for receiving copy of the decision. Department may extend the delivery date for another thirty days. The parties to the case may request to appeal it within thirty (30) days from the day following the date specified for its receipt. In the event that the objection is not submitted, it shall become final and enforceable after the expiration of this period. Date of uploading decision to General Secretariat electronic system shall be deemed the date of decision delivery.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2023-287)

Delivered in Case No. (E-2022-94156)

Keywords:

Excise Tax - Tax Reassessment - Tax Differences - Late Payment Fine - Fine for Failure to Provide Information Requested by ZATCA.

Abstract:

Plaintiff claim to cancel ZATCA decision regarding reassessment of the (fifth) tax period of 2018, including associated fines. ZATCA responded that the reason for tax differences was that ZATCA relied on the higher price between the retail sale price and ZATCA approved prices. It also confirmed that Plaintiff did not cooperate with it and did not commit to submitting the requested documents during the examination process, and thus the late payment fine was imposed. With regard to tax differences item, it is confirmed to Department that: Defendant did not provide any proof of the occurrence of any of the cases that, if they occur, shall give ZATCA the powers to assess tax due on excise goods. Defendant also failed to provide an explanation of mechanism it has adopted for tax reassessment and calculation of tax differences, or standard prices on which it based its reassessment. With regard to the "Late Payment Fine" item: Related Matters Shall Have the Same Force and Effect. With regard to Fine for Failure to Provide Information Requested by ZATCA: Burden of proof is on Defendant; therefore, Department shall not verify occurrence of non-compliance. Department ruled to Accept case in form, and cancel Defendant decision regarding recalculation of excise tax, and cancel late payment fine and fine for failure to provide information. This decision shall be deemed final and enforceable under Article 42 of Tax Dispute and Violation Committee Procedures.

Documents:

- Articles 22 and 23 of [Excise Tax Law promulgated by Royal Decree No. M/86 dated 27/08/1438 AH.](#)
- Article 17/1, 3 and 4 of [Excise Tax Implementing Regulations, Issued by The General Authority of Zakat & Tax's Board of Directors Resolution No. \(19-3-2-3-4\) dated 10/09/1440 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 01/01/2023, First Department to Adjudicate Selective Goods Tax Violations and Disputes in Riyadh, formed pursuant to Article 67 of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, established by Royal Decree No. (13957) dated 26/02/1444 AH, held its session via video conference in accordance with the remote video litigation procedures to consider the above-mentioned case. Since the case fulfilled the



established regulatory procedures, it was filed with General Secretariat of Zakat, Tax and Customs Committees under the aforementioned number and on 02/02/2022 AD.

Facts of this case are as follows: ..., holder of national ID (...), in her capacity as owner of ... organization, C.R. No. (...), submitted a statement of claim objecting the decisions of Defendant regarding re-assessment for (fifth) tax period of 2018, including associated fines, and requested that Defendant decisions be canceled.

Having presented statement of claims to Defendant, it responded as follows: ZATCA states that, after examination and assessment process conducted regarding Plaintiff Declaration for the period referred to above, which resulted in the existence of tax differences, because ZATCA relied on the higher price between the retail price and ZATCA approved prices. Moreover, ZATCA confirms that Plaintiff did not cooperate with it and failed to submit the requested documents during the examination. Based on the foregoing, ZATCA upholds the validity of reassessment for the period subject matter of the case, based on Article 6 of Common Excise Tax Agreement, and Articles 8 and 17 of Excise Tax Implementing Regulations.

With regard to the objected fines: Based on results of examination and assessment, a late payment fine was imposed based on Article 22 of Excise Tax Law. ZATCA also reports that a fine of SAR 1,000 was imposed based on Article 23 of Excise Tax Law, due to Plaintiff failure to cooperate in submitting required documents. Requests: ZATCA requests Honorable Committee to dismiss case for the reasons set out above.

The Plaintiff submitted a replication, in which she stated: Defendant reliance on higher between retail price and standard price list is invalid, and that it was announced that prices of consumer goods and services in GCC countries were amended on May 10, 2021, and disputed goods were imported on October 14, 2018, with reassessment occurring in 2021 AD. Adjustments to ZATCA approved price (standard price) cannot be applied retroactively. Regarding non-cooperation with Defendant, this is due to health conditions experienced by organization owner.

On Sunday, 01/01/2023, First Department to Adjudicate Selective Goods Tax Violations and Disputes in Riyadh held its session via video conference in accordance with the remote video litigation procedures based on Article 15.2) of Tax Dispute and Violation Committee Procedures, promulgated by Royal Decree No: (26040) dated 21/04/1441 AH to consider the case filed by Plaintiff against Defendant, and by calling the parties to the case, Mr.appeared, (... (..... nationality), holding National ID No. (...), As an attorney appointed under POA No. (...), and Mr.appeared, (... Mr....., anational, holding National ID No..... appeared as representative of Defendant by virtue of authorization No. On ./08/1442 AH, issued by the Deputy Governor for Legal Affairs. When asked about his client requests, Plaintiff attorney stated that they seek canceling all fines, including fine for failure to submit required documents. When asked to provide evidence of Plaintiff non-cooperation, Defendant representative stated that he had no proof at present time. Therefore, Department decided to adjourn the hearing for deliberation.

Grounds:

Having reviewed Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance Decision No. (1535) of 11/06/1425 AH, as amended, Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH, as amended, Implementing Regulations of the Law issued by the Decision of Board of Directors of General Authority of Zakat and Income (currently ZATCA) No. (2-3-19) dated 10/09/1440 AH, as amended, and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant laws, regulations and decisions.



In Form: Plaintiff filed a case seeking cancellation of Defendant decision regarding reassessment of excise taxes for the fifth tax period of 2018 including associated fines, and since this is a tax dispute, it falls within jurisdiction of Committee for Resolution of Excise Goods Tax Violations and Disputes, pursuant to Royal Decree No. (26040) dated 21/04/1441 AH. Additionally, case was filed by a person with legal capacity, and within prescribed legal period, which requires Department to accept case in form.

On Merits: Department reviewed case files, including requests, defenses and pleas submitted by parties thereto, and since dispute centers on Plaintiff objection to Defendant decisions regarding reassessment of fifth tax period of 2018, including associated fines. Therefore, Department found that:

First: Tax Differences Item: It is clear that dispute lies in tax differences resulted from reassessment process conducted by Defendant for the fifth tax period of 2018, based on Article 17 of Excise Tax Implementing Regulations, which states that "1. "ZATCA shall calculate Tax Due amount on Excise Goods, in accordance with Regulations provisions; if taxpayer: A. Fails to comply with conditions to file an import declaration or submitted incorrect import declaration. B. Fails to file an Excise Tax Return or submitted an incorrect Excise Tax Return. C. Is not registered for Excise Tax purposes." 2. For the purposes of this Article, an incorrect import declaration or Excise Tax Return shall mean any import declaration or Excise Tax Return which has led to an incorrect calculation of the Tax Due. 3. ZATCA shall inform taxpayer of amount of Tax Due in writing. 4. Written notification shall include the grounds, on which ZATCA calculates the amount of the tax due. Since Defendant did not submit any proof for the occurrence of any of the three cases specified by Article 17.1 of Implementing Regulations of Excise Tax Law, the occurrence of which would activate ZATCA authority to assess the tax due on selective goods. Moreover, Department found that ZATCA did not comply with the requirements dictated by paragraphs (3) and (4) of Article (17) as to notifying taxpayer by a written notice of the amount of the tax due, and that the notice includes the basis relied upon by ZATCA in calculating the amount of the tax due. Since the failure to comply with these requirements undermines the soundness of the decision and taxpayer ability to understand ZATCA assessment and consequently to exercise his right as a taxpayer to accept or object to the assessment. In addition to the foregoing, it was established that Defendant failed to clarify its mechanism used in tax reassessment and calculation of tax differences, or the standard prices on which it relied in the reassessment. If difference between such prices and retail price determined by Plaintiff is the basis for calculating the tax differences. Since Plaintiff has provided customs data which proves that it paid the excise tax and disclosed the soft drinks according to the correct tariff and export invoices, which makes it clear that the tax reassessment is not procedurally and substantively valid, and thus Department concludes to cancel Defendant decision.

Second: Late Payment Fine: Plaintiff objection to imposition of late payment fine resulting from the reassessment of the (fifth) tax period of 2018 is clear. Article 22 of Excise Tax Law provides that: "Anyone who fails to pay the tax due within period prescribed by Regulations shall be punished by a fine equivalent to 5% of the value of unpaid tax for each month or part thereof for which the tax has not been paid." In clause (first), Department concludes to cancel Defendant decision. Since the late payment fine resulted from the same, related matters shall have the same force and effect. Therefore, Department repeals the fine.

Third: Fine for Failure to Provide Information Requested by ZATCA: Plaintiff objection to imposition of a fine for failure to provide information requested by ZATCA during the examination process is clear. Since Article 23 of Excise Tax Law provides that a fine not exceeding SAR (50,000) shall be imposed on anyone who: ... 2. Fails to provide the information required by ZATCA". Since Defendant failed to detail the non-compliance or provide evidence of its occurrence in any way, and since the burden of proof is on Defendant. Therefore,



Department did not verify the failure to provide the required information, and concluded to remove the fine.

Decision:

First: To Accept case in form.

Second: Cancel Defendant decision regarding recalculation of excise tax.

Third: Cancel late payment fine and fine for failure to provide information.

This decision was issued in presence of both parties. Department set thirty (30) days from date for receiving copy of decision, and may extend delivery date for another (30) days. Parties hereto may request to appeal decision within thirty (30) days from the day following the date specified for its receipt. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof. Date of uploading decision to General Secretariat electronic system shall be deemed the date of decision delivery.

May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2023-288)

Delivered in Case No. (E-2022-137283)

Keywords:

Excise tax - Refund of tax paid on goods transported and exported - Refund application - Ignorance of law is no excuse - Late payment fine- Invalidity of late payment fine calculation.

Abstract:

Plaintiff requested to cancel ZATCA decision regarding imposition of excise tax for tax period (G202), and associated fines. ZATCA responded that it is responsible for refunding tax paid on goods transferred and exported, and that Excise registrant must submit a refund application. ZATCA shall then study application and verify that it meets requirements. Department established the following, with regard to excise tax for the disputed tax period (refund): Plaintiff unilaterally and independently refunded the tax on goods that it claimed to have re-exported outside the Kingdom, thus violating the regulations governing tax refund. The defense of ignorance cannot be accepted, as ignorance of the law is no excuse. With regard to the “Late Payment Fine” item: The calculation of the late payment fine for any period prior to the expiration of the fifteenth day following the notification of payment is considered invalid. Department ruled to Dismiss Plaintiff claim regarding excise tax for disputed tax period. Defendant decision regarding late payment fine was modified such that it takes effect from the fifteenth day following the date of notification of the reassessment decision. Decision shall be final and enforceable pursuant to Article 42 of Dispute and Violation Committee Procedures.

Documents:

- Article 22 of [Excise Tax Law promulgated by Royal Decree No. M/86 dated 27/08/1438 AH.](#)
- Articles (17), (18/4), (50/1), (52) of [Excise Tax Implementing Regulations issued by Decision No. \(2-3-19\) of Board of Directors of General Authority for Zakat and Income, dated 10/09/1440 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 01/01/2023, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh, formed pursuant to Article 67 of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/08/1425 AH, as amended, established by Royal Decree No. (13957) dated 26/02/1444 AH, convened a session via video conference, in accordance with remote video litigation procedures, to consider the above-mentioned case filed with General Secretariat of Zakat, Tax and Customs Committees under aforementioned number on 28/07/2022 AD, as it fulfilled established regulatory procedures.



Facts of this case are as follows:Company, C.R. No. (...), has filed through, ID No. (...), in his capacity as Plaintiff Attorney, under POA No. (...), a statement of claim objecting Defendant decision regarding imposition of excise tax for the tax period (G202), as well as associated fines, , and requesting cancellation of Defendant decision.

Having presented statement of claims to Defendant, it responded as follows: That, in the event of the transfer and export of taxable goods pursuant to the provisions of Articles 50 and 52 of the Regulations, which stipulate that ZATCA shall refund the tax paid on goods transferred and exported, the registered person shall submit a refund application, and ZATCA shall study the application and verify its compliance with the conditions set forth in the aforementioned articles. The amount claimed by Plaintiff is not arbitrary as stated, as Plaintiff has committed a violation of Article 50 of the Regulations by deducting the tax on the goods exported from the tax return instead of submitting a refund application. The correct procedure is to submit a refund application in accordance with Article 52 of the Regulations. If the conditions are met and the required documents are submitted as per Article 50 of the Regulations, ZATCA shall examine the application and issue a decision. It emphasized that Plaintiff action was incorrect and their assumption of entitlement to a refund is unfounded. Even assuming that Plaintiff was entitled to a refund, referring to Article 49 of the Regulations reveals that Plaintiff does not meet the conditions for deduction; therefore, Plaintiff action was incorrect under all assumptions..

The Plaintiff submitted a replication, in which she stated: The Defendant should have clarified the procedure and form for the refund application before the expiration of the statutory deadline of 90 days for submitting the application. Since Defendant was late in responding to the application for clarification, Plaintiff cannot be held responsible for submitting the refund application by deducting the tax to be refunded from the tax return. The Defendant position may reflect Defendant current viewpoint and practical practices, but the subject of the case pertains to a tax period two years ago, and there was no public clarification regarding the refund application at that time. Article 49 of the Regulations does not explicitly prohibit the possibility of deducting the paid tax through the tax return. It only stipulates that a licensee of a tax warehouse may deduct from the due tax the amount of tax paid on excise goods that were used in the production of other excise goods, without limiting the use of this procedure to this case only.

On Sunday, 08/01/2023, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh held its session remotely in accordance with remote virtual litigation procedures; pursuant to provisions of Article 15.2 of Dispute and Violation Committee Procedures issued by Royal Decree No. (26040), dated 21/04/1441 AH to consider the case filed by Plaintiff against Defendant. When Parties to case were called, (... (.... nationality), holding National ID No. (...), In his capacity as Plaintiff Attorney, by POA No. (...), and .Mr. (.. Mr....., anational, holding National ID No..... appeared as representative of Defendant by virtue of authorization No. dated..., issued by Deputy Governor for Legal Affairs. After hearing arguments from both parties, Department decided to adjourn the session for deliberation.

Grounds:

Having reviewed Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, Implementing Regulations thereof issued by Minister of Finance Decision No. (1535) dated 11/06/1425 AH, as amended, and based on Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH, as amended, and Excise Tax Implementing Regulation Issued by General Authority of Zakat & Tax Board of Directors Resolution No. (19-3-2) dated 10/09/1440 AH, as amended, and based on Tax Dispute and Violation Committee Procedures promulgated by Royal Decree No. (26040) dated 11/06/1441 AH, and relevant laws, regulations and decisions.



In Form: Since Plaintiff aims through this Case to cancel Defendant decision regarding imposition of excise tax for the tax period(G202), and the resulting fines, and given that this dispute is a tax dispute, it falls within jurisdiction of Committee to Adjudicate Excise Goods Tax Violations and Disputes, pursuant to Royal Decree No. (26040) dated 21/04/1441 H, and since the case was filed by a party with legal capacity and within prescribed statutory period, Department must therefore accept case in form.

On Merits: Having carefully examined case file, including and requests, defenses, and arguments presented by both parties, and since dispute centers on Plaintiff objection to Defendant decision regarding imposition of excise tax for the tax period (G202), and associated fines, Department has found the following:

First: Excise Tax for Disputed Tax Period (Refund): Upon fully reviewing case file, including defenses and arguments presented, it is evident that dispute centers on Plaintiff objection to Defendant decision regarding the imposition of excise tax for the tax period (G202), Plaintiff is requesting the cancellation of Defendant decision. Article 50 of Implementing Regulations of Excise Tax Law stipulates the procedures for tax refunds, stating as follows: "1. Excise registrant may apply for a refund of excise tax from ZATCA. 2. Tax refund application shall be submitted either by means of the excise tax return, or any other form prescribed by ZATCA. 3. Tax refund application shall contain at least the following information: (a) Information on the applicant; (b) Information with respect to the type, quantity and origin of the excise goods for which a refund of Tax is being requested; (c) Amount of tax which has been paid on the release for consumption of the excise goods. 4. For verification purposes of the refund application, the application shall be accompanied by information supporting the amount of tax previously paid on the release for consumption of the excise goods in the Kingdom. 5. ZATCA shall process the tax refund application only if it is submitted within ninety (90) days after payment of the tax on the excise goods that have been released for consumption." Additionally, Article 52 states regarding refunds of export related tax as follows: "1. Refunding tax shall be granted by ZATCA for tax which has been paid for excise goods, which are exported or transported outside Kingdom. 2. Notwithstanding first paragraph of Article 50 of these regulations, person registered for commercial purposes in any member state, and persons practicing export activities, may also apply for this refund of excise tax. 3. Taking into account refund requirements provided for in Article (50) of these Regulations, a tax refund application shall be accompanied by the following: (a) Application for deactivation of tax stamps affixed to designated excise goods; and (b) Copy of export document or any document providing evidence that excise goods have been transported from the Kingdom. Moreover, Article 17 of Excise Tax Implementing Regulations states: "ZATCA shall calculate Tax Due amount on Excise Goods, in accordance with Regulations provisions; if taxpayer. A) Fails to comply with the conditions to file an import declaration or submitted an incorrect import declaration; B) Fails to comply with the conditions to file an excise tax return or submitted an incorrect excise tax return.; or C). Is not registered for excise tax purposes. Since Plaintiff has unilaterally refunded tax on goods that they claimed to have re-exported outside Kingdom, in violation of stipulated refund procedures, and ignorance of these procedures cannot be considered a valid excuse as ignorance of the law is not an excuse, and since this constitutes a violation of relevant regulations enacted to maintain public order, It is evident that Plaintiff has submitted a false return, which authorizes ZATCA to reassess the tax in accordance with Article 17 of the Regulations. Department therefore concludes that Defendant actions were justified.

Second: Late Payment Fine: It is clear that Plaintiff is objecting to Defendant decision regarding the imposition of a late payment fine resulting from the imposition of excise tax for the tax period (G202). Article 22 of Excise Tax Implementing Regulations states: "whoever does not pay taxes due within period specified by Regulations shall be fined an amount equaling (5%) of the value of unpaid tax, for each month or fraction of month for which the



tax was not paid". Article 18.4 of Implementing Regulations of the Law (prior to the latest amendment) defined that period as follows: "Payment of tax due imposed pursuant to a tax assessment shall be made to ZATCA within fifteen (15) days from date on which the person liable for the tax is notified by ZATCA in accordance with Article 17 of the Regulations," which leads the Department to conclude that the calculation of the late payment fine for any period prior to the expiration of the fifteenth day following the notification of payment is invalid.

Decision:

First: Cancel Plaintiff case regarding excise tax for the disputed tax period.

Second: Amend Defendant decision regarding the late payment fine, such that it shall be calculated from the date fifteen days after the date of notification of the reassessment decision. This decision was issued in presence of both parties. Department set thirty days as the date for receiving copy of the decision. Department may extend the delivery date for another thirty days. The parties to the case may request to appeal it within thirty (30) days from the day following the date specified for its receipt. In the event that the objection is not submitted, it shall become final and enforceable after the expiration of this period. Date of uploading decision to General Secretariat electronic system shall be deemed the date of decision delivery.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2023-291)

Delivered in Case No. (E-2022-92244)

Keywords:

Excise tax - Tax reassessment - Tax differences - Final consumer selling price beyond the control of the producer or importer - Late payment fine - "The resulting occurrence shall take the same effect".

Abstract:

Plaintiff is requesting the cancellation of ZATCA decision regarding the reassessment for the fourth tax period of 2019 and the resulting fines. ZATCA responded by stating that the prices were adopted according to the sales invoices provided by Plaintiff, which resulted in tax differences for the disputed period. Regarding the matter of reassessing excise tax, the Department has found that: Final selling price to end consumer is beyond control of producer or importer as it is subject to various considerations that are entirely beyond the control and will of the taxpayer (producer or importer). Furthermore, Defendant overlooked Plaintiff clarification that sales invoices and prices listed therein were amended, and creditor notices were issued. With regard to the "Late Payment Fine" item: Related Matters Shall Have the Same Force and Effect. Department ruled to Accept case in form, cancel Defendant decision regarding reassessment of excise tax, and cancel late payment fine. Decision shall be deemed final and enforceable pursuant to Article (42) of Dispute and Violation Committee Procedures.

Documents:

- Article 6/2 of [Common Excise Tax Agreement of Gulf Cooperation Council \(GCC\) States, by Royal Decree No. M/51 dated 05/03/1438 AH.](#)
- Article 22 of [Excise Tax Law promulgated by Royal Decree No. M/86 dated 27/08/1438 AH.](#)
- Articles (1) and (17) of [Excise Tax Implementing Regulations issued by Decision No. \(2-3-19\) of Board of Directors of General Authority for Zakat and Income, dated 10/09/1440 AH.](#)
- "Related Matters Shall Have the Same Force and Effect".

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 01/01/2023, First Department to Adjudicate Selective Goods Tax Violations and Disputes in Riyadh, formed pursuant to Article 67 of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/15/1425 AH, as amended, established by Royal Decree No. (13957) dated 26/02/1444 AH, held its session via video conference in accordance with the remote video litigation procedures to consider the above-mentioned case. Since the case fulfilled the established regulatory procedures, it was filed with General Secretariat of Zakat, Tax and Customs Committees under the aforementioned number and on 29/02/2022 AD.



Facts of case are as follows: Mr.ID No. (.....), attorney by virtue of POA No. (.....) for Plaintiff, ID No. (.....), in his capacity as owner of Company, CR. No. (...), filed a statement of claim objecting to Defendant decision regarding the reassessment for the fourth tax period of 2019 and the resulting penalties,, and requesting cancellation of Defendant decision.

Having presented statement of claims to Defendant, it responded as follows: ZATCA has reassessed the disputed tax period in accordance with Article (17) of Implementing Regulations. ZATCA bases its reassessment decision on customs declarations numbers (33844 and 40486), where the final selling price to the end consumer was adjusted according to the invoices provided by Plaintiff. The declarations indicate that the tax was calculated on the imported quantities and that the prices were adopted based on what Plaintiff provided in the sales statements and invoices, resulting in tax differences for the disputed period.

The Plaintiff submitted a Replication, in which he replied as follows: Plaintiff have paid the full amount of the estimated tax and the tariff listed at customs, which was collected in full. The Defendant has no right to reassess, contrary to the fixed prices in the documents. If there were any changes in the collection prices, customs should have been notified. Tax was calculated based on the retail unit price and the cost of the goods, and it was also calculated according to the standard prices established at customs based on the retail prices for that category at that time. The sales invoices and creditor notices of the company, which determine the selling price of the product to the company, indicate that it is much lower. ZATCA has taken the value of the selling price of the product from the sales invoices without considering the creditor notices that relate to discounts, which is an abuse of power and is unwarranted. Furthermore, it does not correspond to the actual reality or the selling price of the product. The Defendant has not clarified the basis on which it calculated the tax. Additionally, the place to impose the tax is the first point of entry, and the company paid the tax imposed on it at this specific location. The release of the goods and their entry into the kingdom is considered proof of payment of the due taxes. The Defendant did not take into account the clarification provided by the company that the sales invoices and the prices listed therein were amended and creditor notices were issued, and that the company sent these notices along with the invoices to clarify to Defendant the actual price of the products, which reflects the selling price of the product.

On Sunday, 15/01/2023, First Department to Adjudicate Selective Goods Tax Violations and Disputes in Riyadh held its session via video conference in accordance with the remote video litigation procedures based on Article 15.2) of Tax Dispute and Violation Committee Procedures, promulgated by Royal Decree No: (26040) dated 21/04/1441 AH to consider the case filed by Plaintiff against Defendant, and by calling the parties to the case, Mr.appeared, (... (..... nationality), holding National ID No. (...), Since the present legal representative is not entitled to represent Plaintiff according to the provisions of Article (18) of the Code of Law Practice and its Implementing Regulations, as such the Department has decided not to accept the representation of Plaintiff by the present attorney. Mr. (.. Mr....., anational, holding National ID No..... appeared as representative of Defendant by virtue of authorization No. On ./08/1442 AH, issued by the Deputy Governor for Legal Affairs. Therefore, the Department has decided to adjourn the session for deliberation.

Grounds:

Having perused the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH , as amended, and its Implementing Regulations issued by Minister of Finance Decision No. (1535) of 11/06/1425 AH , as amended, Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH , as amended, Implementing Regulations of the Law issued by the Decision of the Board of Directors of General Authority of Zakat and



Income (currently ZATCA) No. (2-3-19) dated 10/09/1440 AH , as amended, and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 11/06/1441 AH, and the relevant laws, regulations and decisions.

In Form: Since Plaintiff aims through this Case to cancel Defendant decision regarding the reassessment for the fourth tax period of 2019 and the resulting fines, and given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee to Adjudicate Excise Goods Tax Violations and Disputes, pursuant to Royal Decree No. (26040) dated 21/04/1441 H, and since the case was filed by a party who has capacity and within the prescribed statutory period, the Department must therefore accept the case in form.

On Merits: Having carefully considered the case file and the requests, defenses, and arguments presented by the parties, and given that the dispute centers on Plaintiff objection to Defendant decision regarding the reassessment for the fourth tax period of 2019 and the resulting fines, the Department has found the following:

First: Excise Tax Reassessment Item: It is clear that the dispute lies in Plaintiff objection to Defendant decision regarding the reassessment for the fourth tax period of 2019, and the imposition of additional taxes due on the goods imported by Plaintiff based on the difference between the import price declared by Plaintiff and the final selling price to the end consumer as per the invoices provided by Plaintiff. Based on the definition of the tax base as stated in Article (1) of Implementing Regulations of Excise Tax Law, which stipulates that "The value of Excise Good on which Tax is imposed, equals to the retail sales price determined by the importer or producer, or the standard price agreed on these goods...", as well as Article 6.2 of the Common Agreement for Excise Tax of GCC States, which stipulates: "The value on which Tax shall be levied on the remaining Excise Goods shall be determined on the basis of their retail sale price provided by the importer or producer of Excise Goods, or in accordance with a standard price list." Article 17 of Implementing Regulations of Excise Tax Law states: "ZATCA shall calculate the tax due amount on the excise goods, in accordance with the provisions of the Regulations; if the person liable for the payment of the tax due: A- Fails to comply with the conditions to file an import declaration or submitted an incorrect import declaration; B- Fails to comply with the conditions to file an excise tax return or submitted an incorrect excise tax return.; or C- Is not registered for excise tax purposes." The Defendant has not presented any evidence to prove the occurrence of any of the three aforementioned cases that grant Defendant (ZATCA) the power to reassess the tax, merely referring to the fact that the invoices submitted by Plaintiff for the period confirm that Plaintiff has sold the products at a price higher than the retail selling price Plaintiff determined upon importation, which, as it appears, was in line with market prices and standard prices at that time. And because Defendant action of recalculating the tax based on the price at which the products were sold does not conform to the definition of the tax base as stated in the Regulations, nor to Article (6) of the Common Agreement referred to above, since the retail selling price by the importer or producer of excise goods is determined at the time the taxable excise good is placed on the market by them , i.e., when it is sold to the local distributor, and not the price at which it is sold by purchasers to the end consumers, because there is usually no direct relationship between the producer or importer and the end consumer, as the relationship is between the distributor or seller who sold directly to the end consumer, and consequently, determining the price for the end consumer is outside the control of the producer or importer since the sale to the end consumer by the purchaser who bought the goods from the importer or producer is subject to several considerations that are far removed from the control and will of the taxpayer (producer or importer) such as market conditions (supply and demand) and conditions of place and time, and therefore, the taxpayer cannot be questioned about what the taxpayer does not control, and thus the law did not stipulate as a basis for calculating the taxable price in order to preserve legal positions stability. Furthermore, Defendant has overlooked the fact that Plaintiff clarified that the sales invoices and the prices therein were



amended and credit notes were issued (sent along with the invoices to Defendant), which returns the prices to what was determined at the time of importation and the tax was paid on that basis, as a result of which the Department concludes that Defendant decision to reassess the tax for the fourth tax period of 2019 shall be canceled.

Second: Late Payment Fine: It is clear that Plaintiff objection is to the imposition of a late payment fine resulting from the reassessment of the fourth tax period of 2019. Article (22) of Excise Tax Law states: “Anyone who fails to pay the tax due within period prescribed by Regulations shall be punished by a fine equivalent to 5% of the value of unpaid tax for each month or part thereof for which the tax has not been paid.” In Clause (first), Department concludes to cancel Defendant decision. Since the late payment fine resulted from the same, related matters shall have the same force and effect. Therefore, Department repeals the fine subject matter if the case.

Decision:

First: To Accept case in form.

Second: Cancel Defendant decision in relation to the imposition of Excise Goods Tax.

Third: Cancel late payment fine.

This decision was issued in presence of both parties. Department set thirty (30) days from date for receiving copy of decision, and may extend delivery date for another (30) days. Parties hereto may request to appeal decision within thirty (30) days from the day following the date specified for its receipt. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof. Date of uploading decision to General Secretariat electronic system shall be deemed the date of decision delivery.

May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2023-292)

Delivered in Case No. (E-2022-91432)

Keywords:

Excise tax - Tax reassessment - Statutory period - Challenged decision cannot be disputed for being time-barred - Customs clearance- Mechanism for calculating tax differences - Late payment fine - “the resulting occurrence shall take the same effect”.

Abstract:

Plaintiff requested that ZATCA decision regarding the reassessment of the fourth period of 2019 and the second period of 2020 be abolished side by side with the resulting fines. ZATCA responded that Plaintiff did not file its case before the General Secretariat within the specified period; therefore, the challenged decision cannot be disputed for being time-barred. In relation to the reassessment of excise taxes, the Department became clear that: Plaintiff submitted evidence supporting payment of the excise tax with relation to the tax periods subject matter of the case during the customs clearance period. It also became clear that Plaintiff did not import excise goods but rather coconut milk, and Defendant did not define the mechanism for calculating tax differences or the basis upon which the reassessment relied and failed to provide the grounds for applying excise tax law to coconut milk. Regarding late payment fine clause: Related Matters Shall Have the Same Force and Effect. Department ruled to Cancel the Defendant decision regarding reassessment of the excise tax subject matter of this case, and cancel the late payment decision regarding reassessment of the excise tax – the decision shall be deemed final and enforceable in accordance with Article (42) of Tax Dispute and Violation Committee Procedures.

Documents:

- Article 11/1 of [Common Excise Tax Agreement of Gulf Cooperation Council \(GCC\) States, by Royal Decree No. M/51 dated 05/03/1438 AH.](#)
- Article 22 of [Excise Tax Law promulgated by Royal Decree No. M/86 dated 27/08/1438 AH.](#)
- Articles (1/2), (1/15), and (1/17, 3, 4) of the [Implementing Regulations of the Excise Tax Law issued by virtue of ZATCA Board decision No. \(2-3-19\) of 10/09/1440 AH, corresponding to May 15, 2019.](#)
- "Related Matters Shall Have the Same Force and Effect".

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 09/01/2022, First Department to Adjudicate Excise Tax Violations and Disputes in Riyadh, formed pursuant to Article 67 of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, established by Royal Decree No. (13957) dated 26/02/1444 AH, convened a session via video conference in accordance with the remote



video litigation procedures to consider the above-mentioned case. Since the case fulfilled the established regulatory procedures, it was filed with General Secretariat of Zakat, Tax and Customs Committees under the aforementioned number and on 18/01/2022 AD.

The facts of this case could be summarized as follows: Mr., holder of National ID No. (...), in his capacity as the owner of Company, Commercial Registration No. (...), submitted a statement of claim challenging the Defendant decision regarding reassessment of the fourth period of 2019 and the second period of 2020 side by side with resulting fines and requesting cancellation of the Defendant decision.

Having presented statement of claims to Defendant, it responded as follows: We notify the Honorable Committee that Plaintiff did not file his case before the General Secretariat within the prescribed period in accordance with the provisions of Article (2) of the Tax Dispute and Violation Committee Procedures. Whereas ZATCA decision with regard to rejecting the objection was issued on 10/11/2021 AD, Plaintiff filed his case before the General Secretariat on 18/01/2022 AD, and there was a (30) day gap between the issuance of ZATCA decision on 10/11/2021 AD and the date of filing the case; therefore, the challenged decision may not be disputed for being time-barred in accordance with provisions of Article (3.2) of Tax Dispute and Violation Committee Procedures.

The Plaintiff submitted a Replication, in which he replied as follows: Our response to the Replication issued by ZATCA included

rejection of the case in form, as the objection was rejected on 10/11/2021 AD, the request for the Settlement Committee was provided on 24/11/2021 AD, the Settlement Committee employee said that we have the right to file a case before tax committees as long as a (30) day period has not elapsed after issuance of the settlement committee decision, the settlement request was dismissed on 10/01/2022 AD, and the request for tax committees was submitted on 18/01/2022; therefore, the request was not submitted after (30) days in the form.

Moreover, Defendant submitted another Replication including the following: In accordance with powers endowed on ZATCA, subject to Paragraphs (2) and (3) of Article (17) of the Implementing Regulations of Excise Goods Tax Law, ZATCA may review the accuracy of tax calculations based on customs data and demand importers incur any differences, if any. The reassessment implemented by ZATCA resulted in correcting the excise tax of some sweetened drinks, as ZATCA found that there were due excise tax differences that were not paid upon importing. In accordance with the provisions of Articles (2) and (3) of the Implementing Regulations of Excise Goods Tax Law, ZATCA reassessed the tax imposed on imported quantities of "sweetened drinks" based on tax rate mentioned in the abovementioned Articles. Accordingly, ZATCA concluded the following: With regard to the fourth period of 2019 AD, it turned out that paid tax was less than due tax as a result of incorrect entries made instead of using the right measurement unit (milliliter) when registering the quantity, as Plaintiff had multiple customs data with relation to the relevant periods. So, Plaintiff was contacted to send the import auditing requirements related to excise tax, but it failed to do so. Therefore, taxpayer imports registered on SAP were reviewed, and it turned out that tax was calculated as a percentage of (purchase cost/CIF - customs duties), and product prices (indicative prices) were adopted for the volumes and quantities available for ZATCA. With regard to the second quarter of 2020 AD, it turned out that discovered differences were attributed to the fact that Plaintiff has classified imports under the category of (do not subject to tax), and prices were based on the statements of the Plaintiff. After inspection, it became apparent that the final consumer selling price was two riyals; therefore, the final consumer retail price was used as the basis of calculation instead of retail/wholesale dealer price. In accordance with provisions of Article (5) of the Implementing Regulations of Excise Goods Tax Law (RELEASE FOR CONSUMPTION): "The Excise Goods shall be considered released for consumption, and thus shall be taxable", and since the tax on the relevant goods was not paid upon import, it is obligated to pay the same in accordance with the Plaintiff statement. With regard to the late



payment fine imposed pursuant to Article (22) of the Excise Goods Tax Law, and since Plaintiff did not pay the tax within the statutory period, a late payment fine was imposed. Requests: ZATCA requests the Honorable Committee to reject the case based on the abovementioned grounds..

On Monday, 09/01/2022 AD, the First Department to Adjudicate Selective Goods Tax Violations and Disputes in Riyadh held its session via video conference in accordance with the Procedures for Remote Litigation and pursuant to Article (15.2) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No.: (26040) of 21/04/1441 AH corresponding to December 18, 2019, to consider the case filed by Plaintiff against Defendant. When calling the litigants, Mr. (..... nationality), holding National ID No. (...), attended in his capacity as the owner the plaintiff company, and Mr. (.. Mr....., anational, holding National ID No..... appeared as representative of Defendant by virtue of authorization No. On ./08/1442 AH, issued by the Deputy Governor for Legal Affairs. After calling litigants, Plaintiff representative was asked about the subject matter of the case and its requests. He responded that the subject matter of the case is to challenge Defendant decision regarding tax reassessment for the 2019–2020 period and imposing taxation differences on the relevant goods imported by Plaintiff and explained the case file. When Plaintiff representative was asked about whether coconut milk is subject to excise tax, he responded that it is subject to excise tax because it is classified as a sweetened drink, in accordance with Article 2.1 of the Implementing Regulations of Excise Goods Tax Law. When Defendant representative was asked about the basis upon which Defendant relied in its decision regarding tax reassessment of the relevant excise goods, he stated that the basis of Defendant decision was the final consumer retail price. He also stated that the sales invoices submitted by Plaintiff were correct, however, Defendant relied on the final consumer retail price and not Plaintiff/taxpayer sales price. After reviewing the full case file, including all attached defenses, and listening to the full oral argument, Plaintiff representative was asked about his requests. He responded that his objection is limited to Defendant decision to reassess the relevant goods, as the assessment shall depend on the product selling price shown on invoices submitted to Defendant instead of final consumer price. Defendant relied in its tax reassessment of relevant goods on the final consumer retail price, which is a matter out of Plaintiff/taxpayer control, as such price varies according to market conditions and points of sale, as it is established that the taxpayer is accountable for matters under his own control. Plaintiff has observed the conditions of submitting an import permit and tax declaration. Since tax base is determined based on the retail selling price declared by the producer or the standard price, whichever is higher, and the plaintiff prepared its tax return based on the retail selling price, which was confirmed by the Defendant representative. After hearing arguments from both parties, Department decided to adjourn the session for deliberation.

Grounds:

Having reviewed Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH , as amended, and its Implementing Regulations issued by Minister of Finance Decision No. (1535) of 11/06/1425 AH , as amended, Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH , as amended, Implementing Regulations of the Law issued by the Decision of Board of Directors of General Authority of Zakat and Income (currently ZATCA) No. (2-3-19) dated 10/09/1440 AH , as amended, and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant laws, regulations and decisions.

In Form: Plaintiff filed its case to request that Defendant decision related to the (fourth) tax period of 2019 and the second period of 2020 be abolished side by side with related resulting fines, and since this dispute is a tax dispute, it then falls within the jurisdiction of the Committee for Resolution of Excise Tax Violations and Disputes as per Royal Order No.



(26040) dated 21/04/1441 AH, and since the case was filed by a capacitated person, and within the period prescribed by law, it is therefore should be accepted by the Department in form.

On Merits: Having considered the case papers and requests, defenses and arguments made by litigants, and since the dispute is about Plaintiff objection to Defendant decision regarding the fourth tax period of 2018 AD, the second period of 2020 AD, and the fines resulting therefrom, the Department hereby concludes as follows:

First: Excise Tax Reassessment Item: It is clear that the dispute is about the plaintiff objection to reassessment of the fourth period of 2019 AD, the second period of 2020, and imposing payable tax differences on goods imported by Plaintiff. Since Article (11.1) of the Unified Agreement stipulates: "1. "1. Importer shall be required to declare any Due Tax upon import in accordance with provisions of Common Customs Law. Each Member State shall determine payment procedures". Article 15.2 of Excise Tax Implementing Regulations provides that: "An Excise Tax shall be imposed on the following Goods: A. Tobacco Products. B. Soft Drinks. C. Energy Drinks. D. Sweetened Drinks. E. Electronic devices and tools used for smoking, vaping and alike. F. Liquids consumed in electronic devices and tools used for smoking, vaping and alike". Additionally, Article 11.2 of the Common Agreement states: "2. The procedures and mechanism of import and export specified in the Common Customs Law shall apply to all import and export transactions of Excise Goods, in such a manner as not to conflict with the provisions of this Agreement. Article 17.1 of the Excise Tax Implementing Regulations states: "ZATCA shall calculate the Tax Due amount on the Excise Goods, in accordance with the provisions of the Regulations; if taxpayer due: A. Fails to comply with conditions to file an import declaration or submitted incorrect import declaration. B. Fails to comply with the conditions to file an Excise Tax Return or submitted an incorrect Excise Tax Return. C- Is not registered for excise tax purposes." Article 15.1 of Excise Tax Implementing Regulations provides that: "In case of importing Excise goods and offering them for consumption, amount of Tax Due shall be calculated by Saudi Customs based on Tax Base of these goods and in accordance with procedures specified in Common Customs Law". Moreover, Article 17.3 and 4 of the Excise Tax Implementing Regulations state: The Authority shall inform the person liable for the payment of the Tax with the amount of Tax Due by a written notification." Since Plaintiff has presented evidence proving that it paid excise tax for the disputed tax periods during customs clearance, as evidenced by Statement no. (83911) in 2019, which shows the payment of excise tax on non-alcoholic beer amounting to (SAR 21,794), and since it is evident from Statement no. (20581) in 2020 that it did not import any excise goods but rather coconut milk, and since the Defendant has not clarified the method of calculating the tax differences and the basis upon which it relied to reassess, and since the Defendant has not provided a reason for subjecting coconut milk to excise tax, the Department therefore decides to accept the Plaintiff's claim and cancel the Defendant's decision.

Second: Late Payment Fine: It is clear that the Plaintiff's objection is to the imposition of a late payment fine resulting from the reassessment of the tax period (fourth) of 2019 and the period (second) of 2020. Article (22) of the Excise Tax Law states: "whoever does not pay the tax due within the period specified by the Regulations shall be fined an amount equaling (5%) of the value of unpaid tax, for each month or fraction of month for which the tax was not paid". Since the Department has decided in the first Clause to cancel the Defendant's decision, and given that late payment fine resulted from that, whatever is connected thereto shall be governed by the same ruling. Therefore, the Department sees it fit to cancel the Defendant's decision.

Decision:

First: Cancel the Defendant's decision regarding reassessment of excise tax subject matter of the case.



Second: Cancel the decision to impose a late payment fine regarding the excise tax reassessment.

This decision was issued in presence of both parties. Department set thirty (30) days from date for receiving copy of decision, and may extend delivery date for another (30) days. Parties hereto may request to appeal decision within thirty (30) days from the day following the date specified for its receipt. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof. Date of uploading decision to General Secretariat electronic system shall be deemed the date of decision delivery.

May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2023-294)

Delivered in Case No. (E-2022-132455)

Keywords:

Excise tax - Tax reassessment - Statutory period - Challenged decision cannot be disputed for being time-barred - Tax differences- Striking off the commercial register - Closing TIN - Late payment fine - “the resulting occurrence shall take the same effect”.

Abstract:

Plaintiff filed a case seeking cancellation of ZATCA decision regarding the reassessment for the fourth, fifth, and sixth tax periods of 2017, as well as the resulting fines. ZATCA responded by stating that the Plaintiff did not file an objection with ZATCA within the specified period, therefore the challenged decision cannot be disputed for being time-barred. Regarding tax differences, the Department established that: The Defendant did not clarify the retail prices it relied on, and whether it relied on retail prices in the disputed tax periods or in the period when it issued the reassessment. Additionally, the Plaintiff had its commercial register struck off and its TIN closed. With regard to the “Late Payment Fine” item: Related Matters Shall Have the Same Force and Effect. Department ruled to Cancel the Defendant's decision subject matter of the case, as well as its resulting fines- the decision shall be deemed final and enforceable pursuant to Article (42) of the Rules of Procedure for Committees for Resolution of Tax Violations and Disputes.

Documents:

- Article 11/1 of [the Common Excise Tax Agreement of GCC States, promulgated by Royal Decree No. M/51 dated 03/05/1438 AH.](#)
- Article 22 of [Excise Tax Law promulgated by Royal Decree No. M/86 dated 27/08/1438 AH.](#)
- Article (15/1) of [the Excise Tax Implementing Regulations issued by Decision No. \(2-3-19\) of the Board of Directors of the General Authority for Zakat and Income, dated 10/09/1440 AH.](#)
- “The resulting occurrence shall take the same effect”.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday 08/01/2023, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH , as amended and Royal Order No. (13957) dated 26/02/1444 AH, held its session via video conferences as per the remote video litigation procedures to consider above-mentioned case. Since the case fulfilled the established



regulatory requirements, it was filed with the General Secretariat of the Zakat, Tax and Customs Committees under the above number on 30/05/2023.

The facts of this case are summed up that Mr. ..., ID No. (...), in his capacity as Attorney by virtue of POA No. (...), on behalf of the Plaintiff,, ID No. (...), Owner of Company, CR. No. (...), submitted a statement of claims that included an objection to the Defendant's decision regarding the reassessment for the fourth, fifth, and sixth tax periods of 2017,, and the resulting fines, requesting cancellation of the Defendant's decision. Having presented statement of claims to Defendant, it responded as follows: We clarify that Plaintiff did not file an objection with ZATCA within the period specified as per Tax Dispute and Violation Committee Procedures. Since ZATCA's decision on the claims subject to the case was issued on 15/12/2021, while the Plaintiff's objection was dated 14/02/2022, the difference in days between the date of ZATCA's decision and the date of the objection is more than 60 days. Therefore, the challenged decision cannot be disputed for being time-barred and it cannot be appealed according to the provisions of Article (2) of the Rules of Procedure for Committees for Resolution of Tax Violations and Disputes.

Requests: ZATCA requests the Honorable Committee to dismiss the case in form for the reasons stated above.

Moreover, Defendant submitted another Replication including the following: ZATCA maintains its procedural defenses as stated in its responsive memorandum (1); as the Plaintiff did not file an objection with ZATCA within the specified period. On merits, ZATCA initially clarifies that it conducted an inspection and audit of the tax periods mentioned, and during the inspection phase, the Plaintiff was notified to provide additional information: (customs data several times, and filling out the data for those periods). The Plaintiff did not respond to ZATCA regarding this matter. Below is ZATCA's response to the Plaintiff's statement of claim:: Regarding the Plaintiff's claim of having paid due tax at the port, ZATCA clarifies that the Plaintiff did not pay the full amount of tax due for the disputed tax periods, and only paid a portion of it, which led ZATCA to reassess the Plaintiff. Regarding the Plaintiff's claim of providing ZATCA with customs data and ZATCA's failure to issue invoices for the disputed tax periods, ZATCA clarifies that the Plaintiff provided ZATCA with invoices for the imports it made, but did not provide the required customs data. ZATCA clarifies its procedure regarding tax differences and fines for the disputed period as follows: Fourth period of 2017: ZATCA referred to the customs data available to it related to the aforementioned period and examined Customs Declaration no. (6115). The inspection revealed that the Plaintiff did not disclose the imported items in the declaration correctly, which resulted in Plaintiff's failure to pay the full amount of tax due on the imported goods (soft drinks). The plaintiff paid an amount of (SAR 13,824), which led ZATCA to recalculate the due tax based on the retail selling prices to the end consumer for the items listed in the aforementioned declaration, resulting in a due tax of (SAR 28,224), with a difference of (SAR 14,400) from the amount of tax paid by the Plaintiff. Based on the aforementioned, ZATCA subjected the tax differences to the provisions of Article (8) of the Implementing Regulations of the Excise Tax. Fifth period of 2017: ZATCA referred to the customs data available thereto related to the aforementioned period and examined Customs Declaration no. (7536). The inspection revealed that the Plaintiff did not disclose the imported items in the Declaration correctly, which resulted in Plaintiff's failure to pay the full amount of tax due on the imported goods (soft drinks). The plaintiff paid an amount of (SAR 15,864), which led ZATCA to recalculate the due tax based on the retail selling prices to the end consumer for the items listed in the aforementioned declaration, resulting in a due tax of (SAR 31891.50), with a difference of (SAR 16,028) from the amount of tax paid by the Plaintiff. Based on the aforementioned, ZATCA subjected the tax differences to the provisions of Article (8) of the Implementing Regulations of the Excise Tax. Sixth period: ZATCA referred to the customs data available thereto related to the aforementioned period and examined customs declaration no. (9229). The inspection revealed



that the Plaintiff did not disclose the imported items in the declaration correctly, which resulted in Plaintiff's failure to pay the full amount of tax due on the imported goods (soft drinks). The plaintiff paid an amount of (SAR 13.12, 623), which led ZATCA to recalculate the due tax based on the retail selling prices to the end consumer for the items listed in the aforementioned declaration, resulting in a due tax of (SAR 28800), with a difference of (SAR 16,177) from the amount of tax paid by the Plaintiff. Based on the aforementioned, ZATCA subjected the tax differences to the provisions of Article (8) of the Implementing Regulations of the Excise Tax. Regarding the late payment fine: "Based on the aforementioned, and in view of the resulting differences in the amount of tax due, which was not paid by due date, a late payment fine was imposed; pursuant to the provisions of Article (22) of the Excise Tax Law. Requests: 1. ZATCA requests that the esteemed committee rules not to accept the case in form for the reasons stated above. 2. ZATCA requests the esteemed committee rules to dismiss the Case for the reasons stated above.

The Plaintiff submitted a Replication, in which he replied as follows: Upon reviewing the Defendant's response, it contends that the decisions were issued on 15/12/2021, and the objection was filed on 14/02/2022. While the issuance of a decision is one thing and its receipt is another, We would like to inform your honor that we did not receive any notification except by email, and that was on 19/12/2021. As for the official correspondence between us, it is only on the website, and it only contains late payment fees. The first late fee invoice that we received notification of was on 01/01/2022. Therefore, we request that these invoices be canceled.

On Sunday, 08/01/2023, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh held its session remotely in accordance with remote virtual litigation procedures; pursuant to provisions of Article 15.2 of Dispute and Violation Committee Procedures issued by Royal Decree No. (26040), dated 21/04/1441 AH; to consider the Case filed by the Plaintiff against the Defendant. Upon Calling the parties to the Case, .the Plaintiff failed to be present, and Mr. (Mr....., anational, holding National ID No..... appeared as representative of Defendant by virtue of authorization No. dated...., issued by Deputy Governor for Legal Affairs. Since the case is ready for adjudication, the Department has therefore decided to adjourn the session for deliberation.

Grounds:

Having reviewed Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, Implementing Regulations thereof issued by Minister of Finance Decision No. (1535) dated 11/06/1425 AH, as amended, and based on Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH, as amended, and Excise Tax Implementing Regulation Issued by General Authority of Zakat & Tax Board of Directors Resolution No. (19-3-2) dated 10/09/1440 AH, as amended, and based on Tax Dispute and Violation Committee Procedures promulgated by Royal Decree No. (26040) dated 11/06/1441 AH, and relevant laws, regulations and decisions.

In Form: Since the Plaintiff aims through this Case to cancel the Defendant's decision regarding the reassessment for the fourth, fifth, and sixth tax periods of 2017, and given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee to Adjudicate Excise Goods Tax Violations and Disputes, pursuant to Royal Decree No. (26040) dated 21/04/1441 H, and since the case was filed by a party who has capacity and within the prescribed statutory period, the Department must therefore accept the case in form.

On Merits: Having carefully considered the case file and the requests, defenses, and arguments presented by the parties, and given that the dispute centers on the Plaintiff's objection to the Defendant's decision regarding the reassessment for the fourth, fifth, and sixth tax periods of 2017, the Department has found the following:



First: Tax Differences Item: It is evident that the dispute lies in the Plaintiff's objection to the Defendant's action regarding the reassessment for the fourth, fifth, and sixth tax periods of 2017, and the resulting imposition of additional taxes. Article 11.1, of the Common Agreement stipulates that: "1. Importer shall be required to declare any Due Tax upon import in accordance with Common Customs Law provisions. Each Member State shall determine the payment procedures". Article 2.1 of Excise Tax Implementing Regulations provides that: "Excise Tax shall be imposed on the following goods: A. Tobacco Products. B. Soft Drinks. C. Energy Drinks. D. Sweetened Drinks. E. Electronic devices and tools used for smoking, vaping and alike. F. Liquids consumed in electronic devices and tools used for smoking, vaping and alike". Article 15.1 of Excise Tax Implementing Regulations provides that: "In case of importing Excise goods and offering them for consumption, amount of Tax Due shall be calculated by Saudi Customs based on Tax Base of these goods and in accordance with procedures specified in Common Customs Law". Since the Defendant has not clarified the retail prices upon which it relied, and whether it relied on retail prices during the disputed tax periods or at the time of issuing the reassessment, and since the Plaintiff's commercial registration was struck off and TIN closed, and if it is proven that the Defendant reopened the TIN, then its decision would be considered issued against a non-taxpayer, in which case the Department concludes by canceling the Defendant's decision.

Second: Late Payment Fine: It is clear that the Plaintiff objected the imposition of a late payment fine resulting from the reassessment of the fourth, fifth, and sixth tax periods of 2017. Article (22) of the Excise Tax Law states: "whoever does not pay the tax due within the period specified by the Regulations shall be fined an amount equaling (5%) of the value of unpaid tax, for each month or fraction of month for which the tax was not paid". Since the Department has concluded in the first Clause to cancel ZATCA's decision, and given that late payment fine resulted from that, whatever is connected thereto shall be governed by the same ruling. Therefore, the Department sees it proper to cancel the Defendant's decision.

Decision:

- Cancel the Defendant's decision subject matter of the claim, as well as any fines resulting thereof.

This decision was made in presence of both parties, in accordance with provisions of Article (56) of Law of Procedure Before Sharia Courts. The Department has set a deadline of thirty days for the receipt of a copy of the judgment. The Department may extend this deadline for an additional thirty days. The parties to the case may appeal the judgment within thirty (30) days from the day following the specified date of receipt. If no appeal is filed, the judgment shall become final and enforceable after expiration of this period. Date of uploading decision to General Secretariat electronic system shall be deemed the date of decision delivery.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2023-295)

Delivered in Case No. (E-2022-132109)

Keywords:

Excise Tax - Tax Reassessment - Adjustment of Excise Tax Prices - Disclosed Price Discrepancy - Standard Prices - Determination of Price for Final Consumer beyond Producer or Importer Control - Late Payment Fine.

Abstract:

Plaintiff filed a case seeking cancellation of ZATCA decision regarding reassessment of the sixth tax period of 2020, including associated fines, and requested cancellation of Defendant decision. ZATCA responded that it has been established that Plaintiff discloses tax returns at average and weighted prices. ZATCA also submitted two price lists that are different and not dated, and accordingly requested a sample of invoices for items exported to end consumer, distributors or customers. However, Plaintiff failed to submit all requested samples and invoices. Regarding Adjustment of Excise Tax Prices, Department determined the following: Defendant failed to submit evidence of cases that, if proven, shall give Defendant (ZATCA) the authority to reassess tax. Plaintiff attributed prices discrepancy to change in retail price of product due to change in customers, agents, and sale points across markets, hospitals and hotels. Department did not prove that Producer had set prices that were inconsistent with standard prices set by ZATCA. Defendant (ZATCA) did not prove that Plaintiff sold goods at a price higher than those disclosed in its tax returns. Determining end consumer prices shall fall outside control of producers and importers. Therefore, taxpayer shall not be liable for what beyond their scope. With regard to the "Late Payment Fine" item: Related Matters Shall Have the Same Force and Effect. Department ruled to Canceling Defendant decisions regarding adjustment of taxable product prices and tax reassessment and imposition of late payment fine. This decision shall be deemed final and enforceable pursuant to Article (42) of Dispute and Violation Committee Procedures.

Documents:

- Article No. (6) [GCC Common Excise Tax Agreement issued under Royal Decree No. \(M/51\) dated 03/05/1438 AH.](#)
- of Article No. (22) of [Excise Tax Law issued under Royal Decree No. \(M/86\) dated 27/08/1438 AH.](#)
- Articles (1/1), (2/3.8) and (17/1) of [Implementing Regulations of Excise Tax Law issued by ZATCA Board decision no. \(2-3-19\) of 10/09/1440 AH 2-3-19\).](#)
- "Related Matters Shall Have the Same Force and Effect".

Facts:



Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 01/01/2023, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh, formed pursuant to Article 67 of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, established by Royal Decree No. (13957) dated 26/02/1444 AH, convened a session via video conference, in accordance with remote video litigation procedures, to consider the above-mentioned case filed with General Secretariat of Zakat, Tax and Customs Committees under aforementioned number on 23/05/2022 AD, as it fulfilled established regulatory procedures.

Facts of this case are as follows: Company... CR No. (...) submitted by..., holding National ID No. (...), in its capacity as Plaintiff Legal Representative under POA No. (...) submitted a statement of claims objecting Defendant decision regarding reassessment of sixth tax period of 2020 AD, including associated fines and requested cancellation of Defendant decision.

Having presented statement of claims to Defendant, it responded as follows: Defendant found that Plaintiff was disclosing tax returns at average and weighted rates, in violation to Article (6) of Agreement, which obligated clarification of selling or standard price to end consumer. Defendant found that Plaintiff submitted two price lists that were different and undated. Therefore, Defendant requested a sample of invoices for items exported to end consumer, distributors or clients, which Defendant included in a table included in Defendant Memorandum in order to verify that prices match those submitted to Defendant during examination stage. Moreover, Defendant stated its cooperation with Plaintiff during two hearing sessions, and requested Plaintiff to submit relevant documents. However, Plaintiff failed to submit all required samples and invoices. In addition, when Defendant saw that price lists Plaintiff submitted were different and undated, and that it was difficult to allocate them to a specific period of time, items were offered with the highest price available to Plaintiff.

The Plaintiff submitted a replication, in which she stated: Regarding matching prices with list submitted to Plaintiff, Plaintiff explained that Company products are sold in various places across Kingdom. Accordingly, price category of product shall be determined according to nature of place of sale. For example, selling the product in a grocery store at one price and in a five-star hotel at a different price or in a hospital, and price may increase according to place and its operating costs. Plaintiff had also previously requested Honorable Committee to cancel tax and fines based on the same grounds mentioned in previous cases, and Committee agreed. On Sunday, 01/01/2023, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh held its session remotely in accordance with remote virtual litigation procedures; pursuant to provisions of Article 15.2 of Dispute and Violation Committee Procedures issued by Royal Decree No. (26040), dated 21/04/1441 AH to consider the case filed by Plaintiff against Defendant. When Parties to case were called, (... Nationality), holding National ID No., appointed under power of attorney No., and Mr. appeared declared his appearance as attorney for Defendant, under authorization letter No. (...) dated...., issued by Deputy Governor for Legal Affairs. When asking Defendant Representative about recalculating Excise Tax off products subject of this claim, he replied as follows: In accordance with Article No. (7) of Implementing Regulations of Excise Tax Law and Article No. (6) of GGC Common Excise Tax Agreement, Plaintiff may recalculate tax based on highest price available to Plaintiff, and Plaintiff insists on validity of its procedure in the case. Having reviewed Plaintiff Replication which attributed price variation to addition of VAT, as well change of customers, agents and sale points, which is beyond Producer control, as product is sold through various buyers. Whereas Article No. (6) of GCC Common Excise Tax Agreement stated that the value on which the tax is imposed shall be determined based on retail selling price set by Importer or Producer of excise goods, or according to standard price list. Since Producer determined product price based on its sales, Producer shall not be liable for product price once product is no longer under its control. Taxpayer shall only be liable for what falls



within their scope. Therefore, Defendant decision requires cancellation, and accordingly Department decided to adjourn session for deliberation before issuing a decision.

Grounds:



Having reviewed Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, Implementing Regulations thereof issued by Minister of Finance Decision No. (1535) dated 11/06/1425 AH, as amended, and based on Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH, as amended, and Excise Tax Implementing Regulation Issued by General Authority of Zakat & Tax Board of Directors Resolution No. (19-3-2) dated 10/09/1440 AH, as amended, and based on Tax Dispute and Violation Committee Procedures promulgated by Royal Decree No. (26040) dated 11/06/1441 AH, and relevant laws, regulations and decisions.

In Form: Plaintiff filed a case seeking cancellation of Defendant decision regarding reassessment of excise taxes for the sixth tax period of 2020 AD, including associated fines. Since this is a tax disputes, it shall fall within jurisdiction of Adjudication Committee of Excise Tax Violations and Disputes, pursuant to Royal Decree No. (26040) dated 04/21/1441 AH. Since case was filed by a person with legal capacity, and within period stipulated by law, Department accepts the case in form.

On Merits: Upon reviewing case documents, defenses, and arguments presented by both parties, Department determined that dispute lies in Plaintiff objection to Defendant decision regarding reassessment for the sixth tax period of 2020 AD along with associated fines, therefore, Department decided the following:

First: Adjusting Excise Goods Prices: Having fully reviewed case file, including its defenses and arguments, It has been found that the dispute lies in Plaintiff objection to Defendant reassessment for the sixth tax period of 2020 AD, and imposition of price-variation tax, after adjusting prices of excise items according to highest price at which produced goods were sold. Article No. (6) of GCC Common Excise Tax Agreement stated that: “Excise Taxes shall be imposed on the remaining Excise Goods based on their retail sale price, provided the retail sale price is that which is set by Importer or Producer of these Excise Goods or in accordance with a standard price list to be periodically agreed upon by the GCC Tax Authorities, whichever is highest.” Paragraph (1) of Article No. (1) of Implementing Regulations of Excise Tax Law in definition of Tax Base stated that: “value of Excise Good on which Tax is imposed, equals to the retail sales price determined by Importer or Producer, or the standard price agreed on these goods in accordance with Agreement, whichever is higher; exclusive of the Tax due and VAT”. Paragraph (3) of Article No. (8) of Implementing Regulations stated that: “If no or insufficient evidence is provided in accordance with the Second Paragraph of this Article, or if ZATCA or the Saudi Customs has reasonable doubt with respect to the validity of the declared retail sales price, ZATCA or Saudi Customs shall have the right to reject such prices and determine the correct price to be used for calculating the Tax Due, in accordance with the provisions of the Regulations.” Paragraph (1) of Article No. (17) of Implementing Regulations of Excise Tax Law stated that: "ZATCA shall calculate Tax Due amount on Excise Goods, in accordance with Regulations provisions; if taxpayer. A. Fails to comply with conditions to file an import declaration or submitted incorrect import declaration. B. Fails to file an Excise Tax Return or submitted an incorrect Excise Tax Return. C. Is not registered for Excise Tax purposes.” Defendant did not give or provide evidence to support the three cases referred to above in its claim, which if proven, Defendant (ZATCA) shall have the authority of tax assessment. Defendant only referred to Plaintiff (Producer) disclosed tax returns, at average, weighted and varying prices. Plaintiff attributed prices discrepancy to change in retail price of product due to change in customers, agents, and sale points across markets, hospitals and hotels. Department found that Defendant failed to prove that Producer has set prices that do not comply with any standard prices set by ZATCA, nor did Defendant (ZATCA) prove that



Plaintiff sold any of goods at prices higher than those disclosed in tax returns. Defendant procedure of recalculating tax based on higher price of selling to end consumer has no legal ground that is consistent with the definition of tax base stated in Regulations, or Article No. (6) of GGC Common Agreement referred to above, which stipulates that retail sale price by Importer or Producer of excise goods is determined at the time these goods are offered for consumption by Plaintiff, that is when goods are sold to local distributor and not the price at which they are sold by buyers to end consumers. There is usually no direct relationship between Producer or Importer and end consumer, but rather the relationship is between distributor or seller who sold directly to end consumer. Therefore, determining price for end consumer shall not be under the control of Producer or Importer, as the sale to end consumer by buyer who purchased goods from Importer or Producer shall be subject to several considerations that are far from the control and will of the taxpayer (Producer or Importer), such as market conditions (supply and demand) and conditions of place and time, and therefore the taxpayer shall not be responsible for what the taxpayer does not own. Therefore, Department concluded that Defendant procedure of adjusting prices shall be invalid by amending prices of taxable products and tax reassessment, and thus Defendant decision subject of claim shall be canceled.

Second: Late Payment Fine: Plaintiff objection lies in imposition of a late payment fine resulted from the sixth tax reassessment of 2020 AD, and whereas Article No. (22) of Excise Tax Law stated that: “Whoever does not pay tax due within the period specified by the Regulations shall be fined an amount equaling (5%) of the value of unpaid tax, for each month or fraction of month for which the tax was not paid.” Whereas Department has established in Clause (First) that Defendant decision shall be canceled, and since the late payment fine resulted therefrom, what is related to such shall have its ruling. Therefore, Department shall conclude that the fine shall be canceled. .

Decision:

First: Cancellation of Defendant decision regarding adjustment of taxable product prices and tax reassessment.

Second: Abolish Defendant decision regarding the late payment fine.

This decision was issued in presence of both parties. Department set thirty days as the date for receiving copy of the decision. Department may extend the delivery date for another thirty days. The parties to the case may request to appeal it within thirty (30) days from the day following the date specified for its receipt. In the event that the objection is not submitted, it shall become final and enforceable after the expiration of this period. Date of uploading decision to General Secretariat electronic system shall be deemed the date of decision delivery.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2023-304)

Delivered in Case No. (E-2022-141042)

Keywords:

Excise Tax - Tax Reassessment- Notifying Taxpayer in Writing - Standard Price- Late Payment Fine-”resulting occurrence shall take the same effect“- Defendant Decision Cancellation.

Abstract:

Requesting Plaintiff to cancel ZATCA decision regarding reassessment for the period of August 2021 AD, and fines resulted therefrom. Regarding Excise Tax Reassessment, Department has determined the following: Defendant failed to provide proof of occurrence of any of the cases that, if occur, they shall give Defendant (ZATCA) the power to assess tax due on excise goods. ZATCA did not adhere to notifying person obligated to pay the tax by a written notice of the amount of tax due, and that the notice shall include the grounds on which ZATCA relied when calculating amount of tax due. Defendant was satisfied in its statement that the ground of its decision to reassess tax was the standard price, without being able to prove its publication of the standard price prior to the date of import. With regard to the “Late Payment Fine” item: Related Matters Shall Have the Same Force and Effect. Department ruled to Accepting case in form, canceling Defendant decision regarding excise tax reassessment of products subject of this claim, canceling Defendant decision regarding late payment fine. This decision shall be deemed final and enforceable pursuant to Article (42) of Dispute and Violation Committee Procedures.

Documents:

- Article (1/11) of [GCC Common Excise Tax Agreement issued under Royal Decree No. \(M/51\) dated 03/05/1438 AH.](#)
- Articles (2/1), (15/1), (17/1, 3, 4) of [Implementing Regulations of Excise Tax Law issued by ZATCA Board decision no. \(2-3-19\) of 10/09/1440 AH 2-3-19\)](#)
- "Related Matters Shall Have the Same Force and Effect".

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 05/02/2023, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh, formed pursuant to Article 67 of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/05/1425 AH, as amended, established by Royal Decree No. (13957) dated 26/02/1444 AH, convened a session via video conference, in accordance with remote video litigation procedures, to consider the above-mentioned case filed with General Secretariat of Zakat, Tax and Customs Committees under aforementioned number on 15/08/2022 AD, as it fulfilled established regulatory procedures.

Facts of this case are as follows: Company... CR No. (...) submitted by..., holding National ID No. (...), in its capacity as the Legal Representative representing Plaintiff under a statement of



claims objecting Defendant decision regarding reassessment for the period of August 2021 AD, and associated fines , and requested cancellation of Defendant decision.

On Sunday, 02/05/2023, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh held its session via video call in accordance with the procedures for remote video litigation, at exactly 4:30 pm; Based on what was stated in Clause No. (2) of Article Fifteen (15) of Dispute and Violation Committee Procedures, issued by Royal Decree No.: (26040), dated 21/04/1441 AH to consider the case filed by Plaintiff against Defendant. When Parties to case were called, (... (..... nationality), holding National ID No. (...), In its capacity as legal Representative of Plaintiff, and appeared (... Mr....., anational, holding National ID No..... appeared as representative of Defendant by virtue of authorization No. dated...., issued by Deputy Governor for Legal Affairs. When was asked about subject of Plaintiff objection, Plaintiff stated that its objection was to Defendant decision to reassess the tax on the excise goods subject to the claim, which Defendant disclosed in the Customs Declaration. When Defendant Representative was asked about the ground for the tax reassessment, Defendant Representative stated that the ground was the standard price determined by ZATCA. When Plaintiff was asked about the extent of its knowledge of the standard price, Defendant Representative answered no about its knowledge of the standard price, and that the date of its import of the goods was 08/04/2021. When Department requested Defendant Representative to provide evidence of the publication of the standard prices for the excise goods subject to the case, Defendant Representative answered that the same currently does not have evidence of the date of publication of the standard price before the date of Plaintiff import of the taxable goods. Therefore, Department decided to adjourn the session for deliberation.

Grounds:

Having reviewed Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, Implementing Regulations thereof issued by Minister of Finance Decision No. (1535) dated 11/06/1425 AH, as amended, and based on Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH, as amended, and Excise Tax Implementing Regulation Issued by General Authority of Zakat & Tax Board of Directors Resolution No. (19-3-2) dated 10/09/1440 AH, as amended, and based on Tax Dispute and Violation Committee Procedures promulgated by Royal Decree No. (26040) dated 11/06/1441 AH, and relevant laws, regulations and decisions.

In Form: Whereas Plaintiff aims through Plaintiff case to cancel Defendant decision regarding the reassessment of the period of August 2021 AD, and the fines resulting therefrom, and whereas this Dispute is one of the tax disputes, the Dispute shall be considered one of the disputes falling within the jurisdiction of the Adjudication Committee of Excise Tax Violations and Disputes, pursuant to the Royal Decree No. (26040) dated 04/21/1441 AH. Whereas the case was filed by a person with a legal capacity, and within the period stipulated by the law. Therefore, Department accepts the case in form.

On Merits: Upon Department review of the case documents and requests, defenses and arguments presented by both Parties, and whereas the dispute lies in Plaintiff objection to Defendant decision regarding the reassessment process for the period of August 2021 AD and the fines resulting therefrom, therefore, Department decided the following:

First: Excise Tax Reassessment: It appears that the dispute lies in Plaintiff objection to Defendant procedure for the reassessment process for August 2021. Paragraph (1) of Article (11) of GCC Common Agreement stipulates that: “1. Importer shall be required to declare any tax amounts that are due upon import in accordance with the Unified Customs Law. Each Member State shall, at its discretion, determine tax payment procedures.” Paragraph (1) of Article No. (17) of Implementing Regulations of Excise Tax Law also stated that: “Excise Tax shall be imposed on the following goods: A. Tobacco Products. B. Soft Drinks. C. Energy



Drinks. D. Sweetened Drinks. E. Electronic devices and tools used for smoking, vaping and alike. Liquids consumed in electronic devices and tools used for smoking, vaping and alike. Paragraph (3, 4) of Article No. (17) of Implementing Regulations of Excise Tax Law stated that: “ZATCA shall inform the person liable for the payment of the Tax with the amount of Tax Due by a written notification, provided that the written notification shall include the grounds, on which ZATCA calculates the amount of the tax due.” Article 15.1 of Excise Tax Implementing Regulations provides that: In case of importing Excise goods and releasing it for consumption, the amount of Tax Due shall be calculated by the Saudi Customs based on the Tax Base of these goods and in accordance the procedures specified in the Common Customs Law.” Whereas Defendant did not provide details and proof of the occurrence of any of the three cases specified exclusively in paragraph (1) of Article (17) of Implementing Regulations of Excise Tax Law, upon its fulfillment, Defendant (ZATCA) shall have the authority to assess the tax due on excise products. Whereas ZATCA did not seemed complied with the requirements stipulated in paragraphs (3, 4) of Article (17), in the obligation of ZATCA to notify the person obligated to pay the tax by a written notice of the amount of the tax due. In addition, the notice shall include the grounds on which ZATCA relied in its calculation of the amount of the tax due, and whereas adherence to these requirements undermines the soundness of the decision, and the ability of the taxpayer to understand ZATCA behavior in the tax assessment. This is to exercise the taxpayer right as a taxpayer to accept or object to the tax assessment, besides the fact that by referring to the case, Defendant was satisfied in its statement that the grounds of the decision to reassess the tax is the standard price. Without being able to prove that Defendant published the standard price prior to the date of import and verified that the taxpayers were aware of such. Therefore, Department concluded that the reassessment is procedurally and substantively invalid, which requires the court to cancel Defendant decision.

Second: Late Payment Fine: Plaintiff objected to the imposition of a late payment fine resulting from the reassessment process for the tax period of August 2021. Since Department established with (the First Clause) the cancellation of Defendant (ZATCA) decision, and since the tax due notification sent by Defendant did not indicate the grounds used in calculating the tax due, and Defendant did not submit its response to Plaintiff case, and since the late payment fine resulted therefrom, what is related to it takes its ruling; therefore Department concludes to cancel the fine subject of the claim.

Decision:

First: To Accept case in form.

Second: Cancellation of Defendant decision regarding Excise Tax Reassessment: of the product subject of the claim.

Third: Cancellation of Defendant decision regarding late payment fine.

This decision was issued in presence of both parties. Department set thirty days as the date for receiving copy of the decision. Department may extend the delivery date for another thirty days. The parties to the case may request to appeal it within thirty (30) days from the day following the date specified for its receipt. In the event that the objection is not submitted, it shall become final and enforceable after the expiration of this period. Date of uploading decision to General Secretariat electronic system shall be deemed the date of decision delivery.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2023-305)

Delivered in Case No. (E-2022-97062)

Keywords:

Excise Goods Tax – Tax Reassessment – Statutory Period – Late Payment Fine – Irregularity of Late Payment Fine Calculation.

Abstract:

Plaintiff request that ZATCA decision regarding the reassessment of the (Sixth) tax periods of 2020 be abolished together with the resulting fines. ZATCA responded that differences resulted from the calculation of the tax on items for which the tax has not been paid at customs ports. As for Plaintiff failure to pay the tax due during the statutory period, ZATCA adheres to the validity of the imposition of the fine in question. As for the reassessment of goods subject to the excise tax, Department found that: Plaintiff stated in the statement of claim thereof several justifications that are not taken into consideration due to the absence of documentary evidence to support the validity of Plaintiff claim. As for late payment fine, Department found irregularity in calculating the late payment fine for any period preceding the end of the fifteenth (15) day after notification of payment. Department ruled to dismiss Plaintiff's case regarding the tax reassessment, and to amend the late payment fine to be from the date of the lapse of fifteen (15) days from the date of Plaintiff's notification of the tax reassessment – The decision is final and enforceable under Article (42) of Tax Dispute and Violation Committee Procedures.

Documents:

- Article (22) of [Excise Tax Law, issued by Royal Decree No. \(M/86\) dated 27/08/1438 AH.](#)
- Articles (3), (15.1), (17.4), and (18.4) of [Implementing Regulations of Excise Tax Law issued pursuant to ZATCA Board of Directors Decision No. \(2-3-19\) dated 10/09/1440 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 01/01/2023, First Department to Adjudicate Selective Goods Tax Violations and Disputes in Riyadh, formed pursuant to Article 67 of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/08/1425 AH, as amended, established by Royal Decree No. (13957) dated 26/02/1444 AH, held its session via video conference in accordance with the remote video litigation procedures to consider the above-mentioned case. Since the case fulfilled the established regulatory procedures, it was filed with General Secretariat of Zakat, Tax and Customs Committees under the aforementioned number and on 28/02/2022 AD.

The facts of this case are summed up in that Mr....., holder of National ID No. (...), in his capacity as the owner of company, Commercial Registration No. (...), submitted a statement of claims that included an objection to Defendant's decision related to



the reassessment of (Sixth) tax periods of 2020 together with the resulting fines, requesting that Defendant decision be abolished.

Having presented statement of claims to Defendant, it responded as follows: 1. The decision is presumed valid and sound, and whoever claims otherwise should provide proof for his claims. 2. As for Plaintiff's objection to ZATCA assessment of the excise tax due in question, ZATCA imposed the amount of the tax due on Plaintiff's excise goods in accordance with the provisions of Article (3) of GCC Unilateral Agreement for Excise Tax, and Article (2) and Paragraph (2) of Article (3) of Implementing Regulations of Excise Tax Law, where ZATCA found that differences resulted from the calculation of the tax on items for which the tax has not been paid at customs ports, as they were disclosed under tariff items that are not subject to excise tax. ZATCA confirms that the goods in dispute are subject to excise tax in accordance with the provisions of Article (17) of Implementing Regulations of Excise Tax Law. 3. As for fine for error in payment, ZATCA adheres to the validity of the imposition of the fine in question, in accordance with the provisions of Article (22) of the Excise Tax Law, and due to Plaintiff failure to pay the tax due during the statutory period. Therefore, ZATCA requests Honorable Committee to dismiss Plaintiff's case.

On Monday, 26/12/2022 AD, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh held its session via video conference in accordance with the procedures for remote video litigation at 06:50 pm, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH to consider the case filed by Plaintiff against Defendant. Having called the Parties to the case, Mr....., a national, holder of ID No..... appeared in his own capacity, and Mr....., a national, holder of ID No..... as the representative of Defendant by virtue of authorization No. dated .../08/1442 AH issued by Deputy Governor for Legal Affairs. After discussing the two parties to the case, Department decided to close the pleading and adjourn the session for deliberation. After deliberation, Department unanimously decided as follows: Postponement of consideration of the case to allow Defendant, upon request thereof, to provide evidence that Plaintiff's disclosure in the Customs Declaration of the imported items in question was "under tariff items not subject to excise tax", according to pleas stated in the Replication submitted by Defendant, which Plaintiff denied in oral hearing, provided that Sunday, 08/01/2023 AD, at 04:00 pm, is the date set for the consideration of the case.

Moreover, Defendant submitted another Replication including the following: ZATCA would like to point out that Plaintiff activity is to import soft drinks. Plaintiff disclosed the goods in dispute with Saudi Customs under Tariff Item No. (220110200001) in accordance with the attached Customs Declaration, while soft drink item that Plaintiff should have disclosed is under Tariff Item No. (22011030), as this item is one allocated to the goods in dispute. Therefore, it becomes clear to Honorable Committee the validity and soundness of the action taken by ZATCA, where ZATCA exercised statutory rights thereof in the process of examination and assessment as stated in ZATCA reply filed in the case file. Therefore, ZATCA requests Honorable Committee to dismiss Plaintiff's case.

On Sunday, 08/01/2023 AD, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh held its session via video conference in accordance with the procedures for remote video litigation, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH to consider the case filed by Plaintiff against Defendant. Having called the Parties to the case, Mr....., a national, holder of ID No..... appeared in his own capacity, and Mr....., a national, holder of ID No..... as the representative of Defendant by virtue of authorization No. dated .../08/1442 AH issued by Deputy Governor for Legal Affairs. After hearing arguments from both parties, Department decided to adjourn the session for deliberation.



Grounds:

Having reviewed Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH , as amended, and its Implementing Regulations issued by Minister of Finance Decision No. (1535) of 11/06/1425 AH , as amended, Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH , as amended, Implementing Regulations of the Law issued by the Decision of Board of Directors of General Authority of Zakat and Income (currently ZATCA) No. (2-3-19) dated 10/09/1440 AH , as amended, and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant laws, regulations and decisions.

In Form: Since Plaintiff filed its case to request that Defendant decision be abolished related to the (Sixth) tax periods of 2020 together with the resulting fines, and since this is a tax dispute, it then falls within the jurisdiction of the Committee for Resolution of Excise Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH, and since the case was filed by a person with capacity, and within the period prescribed by law, it is therefore accepted in form.

On Merits: Having examined the case papers and the requests, defenses and pleas entered by the parties, Department established that the dispute is centered around Plaintiff objection to Defendant decision regarding the (Sixth) tax periods of 2020 together with the resulting fines. Therefore, Department found that:

First: Reassessment of Goods Subject to Excise Tax: The Department established that the dispute is centered around Plaintiff objection to Defendant decision regarding the (Sixth) tax periods of 2020 on items (Soft Drinks) in question. Whereas Article (3) of Implementing Regulations of Excise Tax Law stipulates: 1. A Tax rate of 100% shall be imposed on tobacco products. 2. A Tax rate of 50% shall be imposed on Soft Drinks. 3. A Tax rate of 100% shall be imposed on Energy Drinks. 4. A Tax rate of 50% shall be imposed on Sweetened Drinks. 5. A Tax rate of 100% shall be imposed on Electronic devices and tools used for smoking, vaping and alike. Whereas Paragraph (4) of Article (17) of Implementing Regulations of Excise Tax Law stipulates: ***(Paragraph (1) in the English version)*** “1. The Authority shall calculate the Tax Due amount on the Excise Goods, in accordance with the provisions of the Regulations; if the person liable for the payment of the Tax due: a) fails to comply with the conditions to file an import declaration or submitted an in correct import declaration.” Whereas Article (15) of Implementing Regulations of Excise Tax Law stipulates: “1. In case of importing Excise goods and releasing it for consumption, the amount of Tax Due shall be calculated by the Saudi Customs based on the Tax Base of these goods and in accordance with the procedures specified in the Common Customs Law.” For the purposes of the first paragraph of this Article, the importer shall provide the following information to the Saudi Customs: (a) Information on the type of Excise Goods intended to be released; (b) The retail sales price of these Excise Goods; (c) Any other information requested by Saudi Customs. Whereas Plaintiff stated in the statement of claim thereof several justifications that are not taken into consideration due to the absence of documentary evidence to support the validity of Plaintiff claim. Whereas Plaintiff admitted that the item in dispute (soft drinks) is subject to the excise tax as stated in Article (3) of Implementing Regulations of Excise Tax Law, which stipulates: “A Tax rate of 50% shall be imposed on Soft Drinks”, as Plaintiff clarified that import process thereof was at the beginning of the application of the Law, and then Plaintiff communicated with ZATCA, which while its response was that there are no tax requirements on Plaintiff. However, Plaintiff failed to state the submission of custom declaration for imported goods and retail prices. Although Plaintiff claimed to import goods at the beginning of the application of the tax, this does not exempt Plaintiff from paying the tax, therefore, Department satisfies to dismiss Plaintiff case.



Second: Late Payment Fine: Plaintiff objection to the imposition of the late payment fine resulting from the process of reassessment of the (Sixth) tax period of 2020 is evident. Whereas Article (22) of Excise Tax Law stipulates: “Whoever fails to pay the tax due within the prescribed period in the Regulations shall be imposed with a fine equivalent to (5%) of the value of the unpaid tax for each month or part thereof for which the tax has not been paid.” Whereas Paragraph (4) of Article (18) of Implementing Regulations of Excise Tax Law (before the last amendment) specified that period by stipulating the following: “The payment of Tax Due reported by an Excise Tax Return shall be made to the Authority no later than fifteen (15) days from the date of notification of person obligated to pay the tax by the Authority, in accordance with Article (17) of Implementing Regulations of Excise Tax Law”. Therefore, Department satisfies to the irregularity in calculating the late payment fine for any period preceding the end of the fifteenth (15) day after notification of payment.

Decision:

First: To dismiss Plaintiff’s case regarding the tax reassessment.

Second: To amend the late payment fine to be from the date of the lapse of fifteen (15) days from the date of Plaintiff’s notification of the tax reassessment.

This decision was issued in presence of both parties. Department set thirty (30) days from date for receiving copy of decision, and may extend delivery date for another (30) days. Parties hereto may request to appeal decision within thirty (30) days from the day following the date specified for its receipt. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof. Date of uploading decision to General Secretariat electronic system shall be deemed the date of decision delivery.

May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2023-306)

Delivered in Case No. (E-2022-97066)

Keywords:

Excise Goods Tax – Tax Reassessment – Clearance of Items – Late Payment Fine – Tax Differences – Irregularity of Late Payment Fine Calculation.

Abstract:

Plaintiff request that ZATCA decision regarding the reassessment of the (Fourth) tax periods of 2019 be abolished together with the resulting fines – ZATCA responded that with regard to the tax differences owed thereto: ZATCA found that Plaintiff disclosed imports on which the excise tax is imposed by ZATCA and did not disclose thereof to Saudi Customs, which resulted in the clearance of items without the payment of the excise tax due on these imports to Saudi Customs. As for Late Payment Fine, ZATCA stated that due to the resulting tax differences, the late payment fine has been imposed – As for the reassessment of goods subject to the excise tax, Department found that: Plaintiff stated in the statement of claim thereof several justifications that are not taken into consideration due to the absence of documentary evidence to support the validity of Plaintiff claim. With regard to the “Late Payment Fine” item: Illegality of calculating late payment fine for any period prior to end of fifteenth day after notification of payment. Department ruled to dismiss Plaintiff’s case regarding the tax reassessment, and to amend the late payment fine to be from the date of the lapse of fifteen (15) days from the date of Plaintiff’s notification of the tax reassessment – The decision is final and enforceable under Article (42) of Tax Dispute and Violation Committee Procedures.

Documents:

- Article 22 of [Excise Tax Law promulgated by Royal Decree No. M/86 dated 27/08/1438 AH.](#)
- Articles (3), (15.1), (17.4), and (18.4) of [Implementing Regulations of Excise Tax Law issued pursuant to ZATCA Board of Directors Decision No. \(2-3-19\) dated 10/09/1440 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 01/01/2023, First Department to Adjudicate Selective Goods Tax Violations and Disputes in Riyadh, formed pursuant to Article 67 of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/08/1425 AH, as amended, established by Royal Decree No. (13957) dated 26/02/1444 AH, held its session via video conference in accordance with the remote video litigation procedures to consider the above-mentioned case. Since the case fulfilled the established regulatory procedures, it was filed with General Secretariat of Zakat, Tax and Customs Committees under the aforementioned number and on 28/02/2022 AD.



The facts of this case are summed up in that Mr....., holder of National ID No. (.....), in his capacity as the owner of Company, Commercial Registration No. (...), submitted a statement of claims that included an objection to Defendant's decision related to the reassessment of (Fourth) tax periods of 2019 together with the resulting fines, requesting that Defendant decision be abolished.

Having presented statement of claims to Defendant, it responded as follows: 1. Regarding the tax differences payable to ZATCA: Article (17) of Implementing Regulations of Excise Tax Law stipulates in its provisions the cases that entitle ZATCA to recalculate the excise tax. Accordingly, ZATCA conducted a reassessment of the tax period described above to ensure the extent of Plaintiff's compliance with the provisions related to excise tax. ZATCA, having examined and assessed Plaintiff's situation, found that Plaintiff disclosed imports on which the excise tax is imposed by ZATCA and did not disclose thereof to Saudi Customs, which resulted in the clearance of items without the payment of the excise tax due on these imports to Saudi Customs. Therefore, Plaintiff violated the provisions stipulated in Article (15) of Implementing Regulations of Excise Tax Law, which emphasized that the importer is required to disclose the excise goods if existed, which Plaintiff failed to comply with. Accordingly, ZATCA recalculated the excise tax due based on the aforementioned grounds. 2. Regarding the late payment fine: In addition to the above, and due to the resulting tax differences, the late payment fine has been imposed based on Article (22) of Excise Tax Law, which stipulates: "Whoever fails to pay the tax due within the prescribed period in the Regulations shall be imposed with a fine equivalent to (5%) of the value of the unpaid tax for each month or part thereof for which the tax has not been paid."

Therefore, ZATCA requests Honorable Committee to dismiss Plaintiff's case.

On Monday, 26/12/2022 AD, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh held its session via video conference in accordance with the procedures for remote video litigation at 06:50 pm, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH to consider the case filed by Plaintiff against Defendant. Having called the Parties to the case, Mr....., a national, holder of ID No..... appeared in his own capacity, and Mr....., a national, holder of ID No..... as the representative of Defendant by virtue of Authorization No. dated .../08/1442 AH issued by Deputy Governor for Legal Affairs. After discussing the two parties to the case, Department decided to close the pleading and adjourn the session for deliberation. After deliberation, Department unanimous decided as follows: Postponement of consideration of the case to allow Defendant, upon request thereof, to provide evidence that Plaintiff's disclosure in the Customs Declaration of the imported items in question was "under tariff items not subject to excise tax", according to pleas stated in the Replication submitted by Defendant, which Plaintiff denied in oral hearing, provided that Sunday, 08/01/2023 AD, at 04:00 pm, is the date set for the consideration of the case.

Moreover, Defendant submitted another Replication including the following: ZATCA would like to point out that Plaintiff activity is to import soft drinks. Plaintiff disclosed the goods in dispute with Saudi Customs under Tariff Item No. (220110200001) in accordance with the attached Customs Declaration, while soft drink item that Plaintiff should have disclosed is under Tariff Item No. (22011030), as this item is one allocated to the goods in dispute. Therefore, it becomes clear to Honorable Committee the validity and soundness of the action taken by ZATCA, where ZATCA exercised statutory rights thereof in the process of examination and assessment as stated in ZATCA reply filed in the case file. Therefore, ZATCA requests Honorable Committee to dismiss Plaintiff's case.

On Sunday, 08/01/2023, First Department to Adjudicate Selective Goods Tax Violations and Disputes in Riyadh held its session via video conference in accordance with the remote video litigation procedures based on Article 15.2) of Tax Dispute and Violation Committee



Procedures, promulgated by Royal Decree No: (26040) dated 21/04/1441 AH to consider the case filed by Plaintiff against Defendant, and by calling the parties to the case, Mr.appeared, (.... nationality), holding National ID No. (...), appeared in his own capacity, and Mr....., Mr....., anational, holding National ID No..... appeared as representative of Defendant by virtue of authorization No. On ./08/1442 AH, issued by the Deputy Governor for Legal Affairs. After hearing arguments from both parties, Department decided to adjourn the session for deliberation.

Grounds:

Having perused the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance Decision No. (1535) of 11/06/1425 AH, as amended, Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH, as amended, Implementing Regulations of the Law issued by the Decision of the Board of Directors of General Authority of Zakat and Income (currently ZATCA) No. (2-3-19) dated 10/09/1440 AH, as amended, and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 11/06/1441 AH, and the relevant laws, regulations and decisions.

In Form: Since Plaintiff filed its case to request that Defendant decision be abolished related to the (Fourth) tax periods of 2019 together with the resulting fines, and since this dispute is a tax dispute, it then falls within the jurisdiction of the Committee for Resolution of Excise Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH, and since the case was filed by a person with capacity, and within the period prescribed by law, it is therefore accepted in form.

On Merits: Having examined the case papers and the requests, defenses and pleas entered by the parties, Department established that the dispute is centered around Plaintiff objection to Defendant decision regarding the (Fourth) tax periods of 2019 together with the resulting fines. Therefore, Department found that:

First: Reassessment of Goods Subject to Excise Tax: Department established that the dispute is centered around Plaintiff objection to Defendant decision regarding the (Fourth) tax periods of 2019 on items (Soft Drinks) in question. Whereas Article (3) of Implementing Regulations of Excise Tax Law stipulates: 1. A Tax rate of 100% shall be imposed on tobacco products. 2. A Tax rate of 50% shall be imposed on Soft Drinks. 3. A Tax rate of 100% shall be imposed on Energy Drinks. 4. A Tax rate of 50% shall be imposed on Sweetened Drinks. 5. A Tax rate of 100% shall be imposed on Electronic devices and tools used for smoking, vaping and alike. Whereas Paragraph (4) of Article (17) of Implementing Regulations of Excise Tax Law stipulates: ***(Paragraph (1) in the English version)*** “1. The Authority shall calculate the Tax Due amount on the Excise Goods, in accordance with the provisions of the Regulations; if the person liable for the payment of the Tax due: a) fails to comply with the conditions to file an import declaration or submitted an in correct import declaration.” Whereas Article (15) of Implementing Regulations of Excise Tax Law stipulates: “1. In case of importing Excise goods and releasing it for consumption, the amount of Tax Due shall be calculated by the Saudi Customs based on the Tax Base of these goods and in accordance with the procedures specified in the Common Customs Law.” For the purposes of the first paragraph of this Article, Importer shall provide the following information to the Saudi Customs: A. Information on the type of Excise Goods intended to be released; b. The retail sales price of these Excise Goods; C. Any other information required by Saudi Customs. Whereas Plaintiff stated in the statement of claim thereof several justifications that are not taken into consideration due to the absence of documentary evidence to support the validity of Plaintiff claim. Whereas Plaintiff admitted that the item in dispute (soft drinks) is subject to the excise tax as stated in Article (3) of Implementing Regulations of Excise Tax Law, which stipulates: “A Tax rate of 50% shall be imposed on Soft Drinks”, as Plaintiff clarified that import process



thereof was at the beginning of the application of the Law, and then Plaintiff communicated with Defendant, which its response was that there are no tax requirements on Plaintiff. However, Plaintiff failed to state the submission of custom declaration for imported goods and retail prices. Although Plaintiff claimed to import goods at the beginning of the application of the tax, this does not exempt Plaintiff from paying the tax, therefore, Department satisfies to dismiss Plaintiff case..

Second: Late Payment Fine: Plaintiff objection to the imposition of the late payment fine resulting from the process of reassessment of the (Fourth) tax periods of 2019 are evident. Whereas Article (22) of Excise Tax Law stipulates: “Whoever fails to pay the tax due within the prescribed period in the Regulations shall be imposed with a fine equivalent to (5%) of the value of the unpaid tax for each month or part thereof for which the tax has not been paid.” Whereas Paragraph (4) of Article (18) of Implementing Regulations of Excise Tax Law (before the last amendment) specified that period by stipulating the following: “The payment of Tax Due reported by an Excise Tax Return shall be made to the Authority no later than fifteen (15) days from the date of notification of person obligated to pay the tax by the Authority, in accordance with Article (17) of Implementing Regulations of Excise Tax Law”. Therefore, Department satisfies to the irregularity in calculating the late payment fine for any period preceding the end of the fifteenth (15) day after notification of payment.

Decision:

First: To dismiss Plaintiff’s case regarding tax reassessment.

Second: To amend the late payment fine to be from the date of the lapse of fifteen (15) days from the date of Plaintiff’s notification of the tax reassessment.

This decision was issued in presence of both parties. Department set thirty (30) days from date for receiving copy of decision, and may extend delivery date for another (30) days. Parties hereto may request to appeal decision within thirty (30) days from the day following the date specified for its receipt. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof. Date of uploading decision to General Secretariat electronic system shall be deemed the date of decision delivery.

May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).



Adjudication Committee

First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh

Decision No. (ER-2023-98713)

Delivered in Case No. (E-2022-98713)

Keywords:

Excise Goods Tax – Reassessment of Excise Goods Tax - Calculation of the percentage prescribed by law - Failure to pay the tax due during the period prescribed by law - Late Payment fine - Reject Plaintiff case.

Abstract:

Plaintiff demands the cancellation of ZATCA decision regarding the revaluation of the reassessment of the fifth period of 2019 until the third period of 2021, and the fine resulting therefrom - ZATCA argued that it subjected the goods in dispute to tax and calculated the percentage prescribed by law, and because Plaintiff did not pay the tax due during the period prescribed by law, ZATCA adheres to the validity of the imposition of the fine in question - It was proven to Department regarding the item of reassessment of the excise goods tax that Plaintiff objects to the reassessment because the products are considered damaged and did not leave the factory and are released for consumption, but it did not provide proof that the damage of the goods resulted from reasons beyond its control, and did not prove that it met the conditions mentioned in Article 5.5 of Implementing Regulations or filled out the form prepared by ZATCA regarding the damaged quantities. With regard to Plaintiff defense of using the product for (...) restaurant center In production as a primary product and deducting it from its acknowledgment, Plaintiff did not submit any document proving its use as a primary product and its payment of the tax amount before using it as a raw material, and its response to the rejoinder to ZATCA did not include anything that denies the validity of what it disclosed in the first place as returns. With regard to the “Late Payment Fine” item: The Chamber found in Clause (First) the validity of Defendant decision, and since the late payment fine resulted from this, what is associated with to it shall be subject to the same ruling. Department ruled to Reject Plaintiff case regarding the reassessment of the excise tax, and regarding the late payment fine. - Deem the decision final and enforceable.

Documents:

- Article 22 of [Excise Tax Law promulgated by Royal Decree No. M/86 dated 27/08/1438 AH.](#)
- Article (5/5), (2/49) of [Implementing Regulations of Excise Tax Law issued under the decision of the Board of Directors of General Authority of Zakat & Tax's Board of Directors Resolution No. \(2-3-19\) dated 10/9/1440 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday 13/03/2022 AD, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh city, formed pursuant to Article (67) of Income Tax law promulgated



by Royal Decree No. (M/1) dated 15/01/1425 AH , as amended and Royal Order No. (13957) dated 26/02/1444 AH, held its session via video conferences as per the remote video litigation procedures to consider above-mentioned case. Since the case fulfilled the established regulatory requirements, it was filed with General Secretariat with the above number on 12/04/2021 AD.

The facts of this case are summed up so as... Refreshment Packaging Company, CR No. (...), submits, through ..., holder of the national ID No. (...) In his capacity as the CEO of Plaintiff Company, an appeal statement that included an objection to Defendant decision regarding the reassessment of the fifth period of 2019 until the third period of 2021, and the fine resulting therefrom, and requests the cancellation of Defendant decision.

By presenting the statement of claim to Defendant, it responded with the following: ZATCA has subjected the disputed goods to tax and calculated the percentage prescribed by law in accordance with the provisions of Article 5.5 of Implementing Regulations of Excise Tax Law, which stipulates: "Excise Goods shall be considered released for consumption, and thus shall be taxable in the following

cases: 5- The Total Damage or loss of Excise Goods placed under a Tax Suspension Arrangement, unless the Licensee can provide evidence that the damage or loss is caused by reasons beyond its control,

under the following conditions and procedures: (a) The Licensee shall fill the form prescribed by ZATCA for that purpose, which shall include at least the following information: 1. Tax warehouse license number of the Licensee. 2. Information related to the Total Damage or irreversible loss of Excise Goods. 3. Evidence confirming that the Total Damage or irreversible loss is attributed to

reasons beyond the control of the Licensee. (b) The Licensee shall submit the completed form to ZATCA within a period not exceeding seven (7) days, as of the occurrence of the total damage or irreversible loss. (c) ZATCA will notify the licensee of its decision within a period not exceeding fourteen (14) days from the date of receiving the form. Or otherwise, the Total Damage or the irreversible loss of Excise goods shall be considered made for reasons beyond the control of the Licensee. (d) The concerned department at ZATCA may, for just one time, extend the period prescribed in Paragraph (C) of this Article to another similar period, provided that the extension decision shall be issued, prior to the end of the initial period and, the Licensee shall be notified of the extension. (e) If the Licensee does not submit the form within the period mentioned in paragraph (B) above, or if ZATCA decided that the provided information is insufficient or incorrect, then Excise Goods shall be considered to be released for consumption at the time of total damage or irrecoverable loss. ZATCA adheres to the validity of the imposition of the fine subject of the case, due to Plaintiff not paying the due tax within the period prescribed by law. Requests: ZATCA requests the Honorable Committee to not accept the case in form, and to reject it for the reasons explained above.

On Monday, 13/03/2023, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh held its session via video conference in accordance with the procedures for remote video litigation based on Article 15.2 of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No.: (26040), dated 21/04/1441 AH to consider the case filed by Plaintiff against Defendant: Having called the parties to the case; appeared ..., Saudi National, under national ID No. (...), in his capacity as an attorney for Plaintiff under Power of Attorney No. (...), as well as the representative of Defendant: ... Under national ID No. (...), in its capacity as representative of Defendant, under authorization letter no. (...) On ./05/1444 AH, issued by the Deputy Governor for Legal Affairs. After discussion with the two parties to the case, the Chamber decided to adjourn the session for deliberation.

Grounds:





Having reviewed Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH , as amended, and its Implementing Regulations issued by Minister of Finance Decision No. (1535) of 11/06/1425 AH , as amended, Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH , as amended, Implementing Regulations of the Law issued by the Decision of Board of Directors of General Authority of Zakat and Income (currently ZATCA) No. (2-3-19) dated 10/09/1440 AH , as amended, and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant laws, regulations and decisions.

In form, since Plaintiff filed its case to request that Defendant decision be abolished with respect to the reassessment of the fifth period of 2019 until the third period of 2021 based on Excise Tax Law and its Implementing Regulations, and since this dispute is a tax dispute, it then falls within the jurisdiction of the Committee for Resolution of Excise Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH, and since the case was filed by a person with capacity, and within the period prescribed by law, it is therefore accepted in form.

On merits, having considered the case files and the requests, defenses and arguments made by the parties, and since the dispute is about Plaintiff objection to Defendant decision regarding the reassessment of the fifth period of 2019 until the third period of 2021, and the fines resulting therefrom, Department hereby concludes as follows:

First: Excise Tax reassessment item: It is found that the dispute lies in Plaintiff objection to Defendant (ZATCA) reassessment of the fifth period of 2019 until the third period of 2021, and the imposition of tax differences payable on items, and where paragraph (5) of Article (5) of Implementing Regulations of Excise Tax Law stipulates: "Excise Goods shall be considered released for consumption, and thus shall be taxable in the following

cases: 5- The Total Damage or loss of Excise Goods placed under a Tax Suspension Arrangement, unless the Licensee can provide evidence that the damage or loss is caused by reasons beyond its control, under the following conditions and procedures: (a) The Licensee shall fill the form prescribed by ZATCA for that purpose, which shall include at least the following information: 1. Tax warehouse license number of the Licensee. 2. Information related to the Total Damage or irreversible loss of Excise Goods. 3. Evidence confirming that the Total Damage or irreversible loss is attributed to

reasons beyond the control of the Licensee. (b) The Licensee shall submit the completed form to ZATCA within a period not exceeding seven (7) days, as of the occurrence of the total damage or irreversible loss. (c) ZATCA will notify the licensee of its decision within a period not exceeding fourteen (14) days from the date of receiving the form. Or otherwise, the Total Damage or the irreversible loss of Excise goods shall be considered made for reasons beyond the control of the Licensee. (d) The concerned department at ZATCA may, for just one time, extend the period prescribed in Paragraph (C) of this Article to another similar period, provided that the extension decision shall be issued, prior to the end of the initial period and, the Licensee shall be notified of the extension. (e) If the Licensee does not submit the form within the period mentioned in paragraph (B) above, or if ZATCA decided that the provided information is insufficient or incorrect, then Excise Goods shall be considered to be released for consumption at the time of total damage or irrecoverable loss. Since Plaintiff objects to the reassessment because the products are considered damaged and did not leave the factory and released for consumption, but it did not provide proof that the damage of the goods resulted from reasons beyond its control, and did not prove that it met the conditions mentioned in Article 5.5 of Implementing Regulations or filled out the form prepared by ZATCA regarding the damaged quantities. With regard to Plaintiff defense of using the product for (...) restaurant center In production as a primary product and deducting it from its acknowledgment in accordance with Article 49.2 of Implementing Regulations, Plaintiff did not submit any document proving the use of the product as a primary product and its payment



of the tax amount before using it as a raw material, and its response to the rejoinder to ZATCA did not include anything that denies the validity of what it disclosed in the first place as returns.

Second: Late Payment Fine: It is found that Plaintiff objected to the imposition of the late payment fine resulting from the reassessment of the tax period in question. Article (22) of Excise Tax Law stipulates: "Whoever does not pay the tax due within the period specified by the Regulations shall be fined an amount equaling (5%) of the value of unpaid tax, for each month or fraction of month for which the tax was not paid." Whereas Department has found in Clause (First) the validity of Defendant decision, and since the late payment fine resulted from this, what is associated with to it shall be subject to the same ruling, which makes Department reject Plaintiff case regarding the late payment fine.

Decision:

First: Accept the case in form.

Second: Reject Plaintiff case regarding the reassessment of the excise tax.

Third: Reject Plaintiff case regarding the late payment fine.

This decision was issued in presence of the parties to the case, and the decision will be available for receipt within thirty days through the website of the, and Department may extend the delivery date for another thirty days as it deems fit, and the parties to the case shall have the right to request an appeal of the decision within thirty days from the day following the date specified for receiving the decision.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2023-138839)

Delivered in Case No. (E-2022-138839)

Keywords:

Excise Goods Tax – Reassessment of Excise Goods Tax - Calculating Excise Goods Tax on Certain Goods Not Subject to Excise Goods Tax - Taxable Items - Late Payment Fine.

Abstract:

Plaintiff demands to cancel the decision of ZATCA regarding Defendant procedure of calculating the excise goods tax on certain goods that are not subject to the excise goods tax, and the fine resulting therefrom for the sixth tax period of 2019 - it was proven to Department in relation to the item of the reassessment of the excise goods tax that Defendant did not attach to the customs specification mentioned in its appeal statement, and it did not clarify the bases of its calculation of the tax, and what items Plaintiff imported and subjected to the tax. Defendant also referred to a field visit on 01/12/2019, from which it found the existence of taxable items. However, it did not submit the field detection report to prove the incident. Whereas Defendant did not provide any assessment notice showing the amounts of the tax imposed by it, a detection report signed by Plaintiff, or an email in which it is proven that it was properly notified of the administrative decision, nor clarified the calculation mechanism for the taxpayer, nor made available for the taxpayer through its electronic portal to the taxpayer its obligations towards it, which guarantees its right to understand and appeal the decision. With regard to the "Late Payment Fine" item: The Chamber decided in Clause (First) to cancel Defendant decision, and since the late payment fine resulted from this, what is associated with it shall be subject to the same ruling. Department ruled to Abolish Defendant decision regarding the differences in excise goods and the late payment fine - consider the decision is final and enforceable.

Documents:

- Article (5) of [Implementing Regulations of Excise Tax Law issued under the decision of the Board of Directors of General Authority of Zakat & Tax's Board of Directors Resolution No. \(2-3-19\) dated 10/9/1440 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 13/03/2023, First Department for Adjudication of Excise Goods Tax Violations and Disputes in the City of Riyadh, formed under Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and its amendments, formed by Royal Order No. (13957) dated 26/02/1444 AH, held a session with reference to the decision of the First Appeal Department for Value Added Tax and Excise Goods Violations and Disputes No.(390-2022- (VA) dated 01/06/2022 AD, issued in Appeal Case No. (2021-82356- (E) dated 6/11/2021 AD, which includes; "First: Accept the Appeal of /... Holder of National Identity



No (...) In their capacity as owner of ... Trading Corporation, registered under C.R. No. (...) In form, for submission during the period prescribed by law. Second: Accept the Appeal of /... Holder of National ID No. (...), owner of ... Trading Corporation, C.R. No. (...), and cancel of the decision of First Department to adjudicate violations and disputes of excise commodity tax in Riyadh No. (23-2021- (ER), and consider the case on merits. "Accordingly, Department decides to consider the case on merits.

The facts of this case are summed up so as... Holder of National ID No. (...), owner of ... Trading Corporation, C.R. No. (...), submitted a statement of claim that included its objection to Defendant decision regarding the calculation of excise goods tax on certain goods that are not subject to excise goods tax for the sixth tax period of 2019, and the imposition of a late payment fine of SAR (996,471.00) , and requests the cancellation of Defendant decision.

By presenting the statement of claim to Defendant, it responded with the following: Regarding the due tax: With reference to what Plaintiff mentioned in its statement of claim, ZATCA clarifies to the Honorable Committee that it conducted an examination for the tax period referred to above, through the field visit that took place on 01/12/2019, and where it was found that Plaintiff has a number of items, including (caramel beverage– strawberry beverage– chocolate beverage– Nescafe with sizes of (50/100/200) grams – lemon beverage– Nestle milk... Etc.), and that these items are subject to the excise goods tax because they contain sweetened materials for the purpose of consumption as a drink, whether ready to drink, concentrates or any form that can be converted into a drink. ZATCA confirms that it cannot be based on whether or not they are subject to the statements issued by the suppliers to Plaintiff, to the effect that the items are not subject to the excise goods tax, and since ZATCA published the relevant laws and guidelines that would clarify and define the items subject to the excise goods tax. It also should be noted that Plaintiff did not clarify the names of the imported items in the customs specification, but rather only indicated that the imported items have no added sugar or sweeteners, and ZATCA clarifies that the taxpayers are the ones responsible for disclosure at the outlet when importing the items subject to the excise goods tax, based on Article (11) of the Common Excise Agreement for the States of the Gulf, which stipulates the following: "1. Importer shall be required to declare any Due Tax upon import in accordance with Common Customs Law provisions. Each Member State shall determine the payment procedures". ZATCA may refer to these customs specifications and request additional documents and reassessment in the event that it finds an error or decrease in the amount of tax due. Based on the foregoing, ZATCA examined and reassessed these items by calculating the tax differences due for the taxable items, based on Article (17) of Implementing Regulations for Excise Goods Tax. 2/ Regarding the late payment fine: Based on the above, and due to the differences in the value of the tax due and unpaid on the date prescribed by law, a late payment fine was imposed, based on the provisions of Article (22) of Excise Goods Tax Law, which states: "Whoever does not pay the tax due within the period specified by the Regulations shall be fined an amount equaling (5%) of the value of unpaid tax, for each month or fraction of month for which the tax was not paid." Based on the above, ZATCA requests the Honorable Committee to dismiss the case for the grounds stated above and to uphold ZATCA procedures subject of the case, and ZATCA reserves the right to provide further replies and clarifications until the closing of the pleadings.

Plaintiff submitted a rejoinder in which stated the following: First: The Company is not subject to excise tax, as the company does not deal in any of the products stipulated in Article 2 of Implementing Regulations for taxable excise goods. Second: Lack of examination of documents and error in reasoning, as Defendant did not provide grounds for its decision and did not support it with evidence. Third: The decision lacks supporting documents, as Defendant has issued a decision without relying on official or clarifying documents.

On Monday, 13/03/2023, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh held its session via video conference in accordance with the procedures



for remote video litigation based on Article 15.2 of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No.: (26040), dated 21/04/1441 AH, when called to the session, attended ... Saudi National, under National ID No. (...) Attorney of Plaintiff under Power of Attorney No. (...), as well as the representative of Defendant: ... Under national ID No. (...), in its capacity as representative of Defendant, under authorization letter no. (...) And dated .../ 05/ 1444 AH, issued by the Deputy Governor for Legal Affairs. At the beginning of the session and when informing Department of the appeal decision issued in case No.(390-2022- (VA. And when asked about its response, the Defendant replied that it adheres to what was stated in the rejoinder submitted in the case file. For the validity of the case for adjudication is in accordance with the provisions of Article (20) of the Tax Dispute and Violation Committee Procedures. Accordingly, Department decided to adjourn the session in preparation for the issuance of the decision.

Grounds:

Having reviewed Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH , as amended, and its Implementing Regulations issued by Minister of Finance Decision No. (1535) of 11/06/1425 AH , as amended, Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH , as amended, Implementing Regulations of the Law issued by the Decision of Board of Directors of General Authority of Zakat and Income (currently ZATCA) No. (2-3-19) dated 10/09/1440 AH , as amended, and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant laws, regulations and decisions.

In Form: Since Plaintiff aims from its claim to cancel Defendant decision regarding the calculation of the excise goods tax on some goods that are not subject to the excise goods tax, and the late payment fine resulting therefrom for the sixth tax period of 2019, and since this dispute is one of the disputes within the jurisdiction of the Committee for Resolution of Income Tax Violations and Dispute under Royal Order No. (26040) dated 21/04/1441 AH, and where the case was submitted by a person of capacity, and within the period prescribed by law, which requires Department to accept the case in form.

On Merits: By considering the case files and the response of the two parties after giving them enough time to express and submit what they have, it has been proven to the Chamber that the dispute lies with Plaintiff objection to Defendant procedure of calculating the excise goods tax on certain goods that are not subject to the excise goods tax, and the fine resulting therefrom for the sixth tax period of 2019. Accordingly, the Chamber found the following:

First: Excise Tax reassessment item: It is found that the dispute lies in Plaintiff objection to Defendant reassessment of the excise goods tax on Plaintiff, due to Defendant imposition of an excise goods tax on non-taxable products, and where Article (5) of Implementing Regulations of Excise Goods Tax stipulates: "Excise Goods shall be considered released for consumption, and thus shall be taxable in the following cases: 1. Import of Excise Goods, unless they are placed under a Tax Suspension Arrangement. 2. Producing Excise Goods out of Tax Suspension Arrangement", and when considering all attached documents and considering the parties' defenses, the Chamber found that Defendant did not attach the custom specification mentioned in its rejoinder, and did not clarify the bases of its calculation of the tax and what items Plaintiff imported and subjected to tax. Defendant also referred to a field visit on (01/12/2019), and it found the existence of taxable items. However, it did not provide the field detection report to prove the incident, and since Defendant did not provide any assessment notice showing the amounts of tax imposed by it, a detection report signed by Plaintiff, or an email in which it proves its proper notification of the administrative decision, and it did not clarify the mechanism of calculation for the taxpayer or make available through its electronic portal to the taxpayer its obligations towards it, which guarantees its right to



understand the decision and object to it, which leads the Chamber to accept Plaintiff claim and cancel the decision of Defendant (ZATCA) regarding the imposition of the excise tax.

Second: Late Payment Fine: It is found that the dispute lies in Plaintiff objection to Defendant imposition of the late payment fine resulting from the notice of final assessment of the tax period in dispute (sixth 2019), and where the Chamber found in Clause (1) that Defendant decision (ZATCA) was canceled, and since the late payment fine resulted from this, what is associated with to it shall be subject to the same ruling, which makes with the Chamber cancel Defendant decision (ZATCA) regarding the late payment fine.

Based on the foregoing and pursuant to the provisions of the Common Excise Agreement, the Value Added Tax Law and its Implementing Regulations, and the Tax Dispute and Violation Committee Procedures, the Chamber, after unanimous deliberation, decided:

Decision:

First: To Accept case in form.

Second: Cancel Defendant decision in relation to the imposition of Excise Goods Tax.

Third: Cancellation of Defendant decision regarding late payment fine.

This decision was issued in presence of the parties to the case, and the decision will be available for receipt within thirty days through the website of the, and Department may extend the delivery date for another thirty days as it deems fit, and the parties to the case shall have the right to request an appeal of the decision within thirty days from the day following the date specified for receiving the decision.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2023-165776)

Delivered in Case No. (E-2021-83199)

Keywords:

Excise Goods Tax - Excise Goods Tax Value Reassessment - Late Payment Fine - Payment of Due Tax Based on Cost Price of Imported Products - Annulment of Defendant Decision.

Abstract:

The plaintiff demands the annulment of the decision by ZATCA regarding Excise Goods Tax Reassessment for the tax period from 01/12/2017 to 31/07/2018. ZATCA responded that, after conducting an examination on the plaintiff, it was found that there were due excise tax differences that had not been paid upon import because the plaintiff paid the due tax based on the cost price of the imported products 'tobacco products' and not on the retail price to the end consumer. According to Article 17 of the Executive Regulations of Excise Tax Law, ZATCA shall be entitled to calculate the due tax amount on excise goods according to the provisions of the regulations if the person obliged to pay the due tax: a. has not complied with the submission requirements by submitting an import permit or has submitted an invalid import permit. Regarding the late payment fine: Based on the aforementioned and due to the differences in the amount of due tax that were not paid within the regulatory date, a late payment fine was imposed, pursuant to Article 22 of Excise Tax Law. Therefore, ZATCA requests the dismissal of the case and the endorsement of ZATCA action. It was proven to the Chamber that, concerning the clause (reassessment of the excise tax for the tax period from 01/12/2017 to 31/07/2018), the defendant did not provide evidence to detail and demonstrate the occurrence of any of the three cases exclusively specified in Article 17.1 of the Executive Regulations of Excise Tax Law, which, if proven, would grant the defendant the authority to assess the due tax on excise goods. Furthermore, the defendant did not submit proof of compliance with the requirements stipulated in paragraphs (4) and (6) of Article 17. The adherence to these requirements affects the validity of the decision and the taxpayer's ability to understand ZATCA conduct in tax assessment and exercise its right as a taxpayer to accept or object to it. With regard to the "Late Payment Fine" item: Since it was proven to the Chamber in the previous item the annulment of the defendant's decision, and since it resulted in the late payment fine, any related matter shall have the same ruling and effect. Department ruled to Annulment of the defendant's decision regarding the excise goods tax reassessment, and the late payment fine - the decision shall be considered final and enforceable.

Documents:

- Article No. (11) [The Unified Agreement for Excise Goods Tax for the Gulf Cooperation Council \(GCC\) countries issued by the Royal Decree No. \(M/51\) on 03/05/1438 AH](#)
- of Article No. (22) of [Excise Tax Law issued under Royal Decree No. \(M/86\) dated 27/08/1438 AH.](#)
- Articles (2/1), (15/1), (17/1, 4, 6) [of the Executive Regulations of the Value Added Tax Law issued by the decision of the Board of ZATCA No. \(3839\) on 14/12/1438 AH.](#)



Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 02/04/2023, First Appeals Chamber for Excise Tax Interventions and Disputes in Riyadh, formed pursuant to Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) of 15/01/1425 AH and its amendments, and constituted by Royal Order No. (13957) of 26/02/1444 AH, held its session, which was conducted via video conference according to remote litigation procedures, to consider the aforementioned case. Since the case has met the prescribed legal procedures, it was filed with General Secretariat of Zakat, Tax, and Customs Committees under the above number on 25/12/2022 AD.

Referring to the decision of First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods No. (894-2022-VA) of 01/11/2022, issued in the appeal case No. (2021-87496-E) of 22/12/2021, which includes; "First: Acceptance of the appeal from/ ..., National ID No. (...), owner of the Establishment ... for Commerce, C.R. No. (...), in terms of formality; for being submitted within the regulatory period. Second: Acceptance of the appeal / ..., National ID No. (...), owner of the Establishment ... for Commerce, C.R. No. (...), and annulment of the decision of First Appeals Chamber for Excise Tax Interventions and Disputes in Riyadh No. (140-2021-ER), and return the case to it for consideration on the merits." Accordingly, the Chamber decides to consider the case on its merits.

Facts of this case are as follows: Mr. ..., National ID No. (...), in his capacity as owner of ... establishment, for Commerce, C.R. No. (...), submitted a statement of case that included its objection to the defendant's decision regarding the reassessment of 2017 and 2018 declarations, and the cancellation of the resulting fines and requesting the annulment of the defendant's decisions.

Upon presenting the plaintiff's statement of case to the defendant's Attorney, they responded with a memorandum containing the following points: After conducting an examination on the plaintiff, it was found that there were due excise tax differences that had not been paid upon import because the plaintiff paid the due tax based on the cost price of the imported products 'tobacco products' and not on the retail price to the end consumer. According to Article 17 of the Executive Regulations of Excise Tax Law, ZATCA shall be entitled to calculate the due tax amount on excise goods according to the provisions of the regulations if the person obliged to pay the due tax: a. has not complied with the submission requirements by submitting an import permit or has submitted an invalid import permit. Regarding the late payment fine: Based on the aforementioned and due to the differences in the amount of due tax that were not paid within the regulatory date, a late payment fine was imposed, pursuant to Article 22 of Excise Tax Law, which states: "Anyone who fails to pay the due tax within the period specified by the regulations shall be penalized with a fine of (5%) of the unpaid tax amount for each month or part thereof in which the tax remains unpaid". Based on the foregoing, ZATCA requests the dismissal of the case for the reasons outlined above and the endorsement of ZATCA action in the subject of the case.

On Sunday, 02/04/2023, First Appeals Chamber for Excise Tax Interventions and Disputes in Riyadh, held its session, which was conducted via video conference according to remote litigation procedures, based on what is stated in Clause No. (2) of Article (15) of Rules of Tax Dispute and Violation Committee Procedures issued by the Royal Order No.: (26040), dated 21/04/1441 AH; and upon calling the parties to the case, the plaintiff appeared in person /..., National ID No. (...), and ... appeared, by National ID No. (...), as a representative of the defendant, based on Authorization Letter No. (...). On .../05/1444 AH, issued by the Deputy Governor for Legal Affairs. At the beginning of the session, and after by informing the Chamber of the Appeals Decision issued in case No. (2021-87496-E), and after discussing with



both case parties, the Chamber decided to adjourn the session for deliberation and to issue a decision.

Grounds:

Having reviewed Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH , as amended, and its Implementing Regulations issued by Minister of Finance Decision No. (1535) of 11/06/1425 AH , as amended, Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH , as amended, Implementing Regulations of the Law issued by the Decision of Board of Directors of General Authority of Zakat and Income (currently ZATCA) No. (2-3-19) dated 10/09/1440 AH , as amended, and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant laws, regulations and decisions.

In Form: Since the plaintiff aims in its case to annul the defendant's decision regarding its objections to the 2017 and 2018 declarations, and to cancel the resulting fines, and given that this dispute falls within the jurisdiction of the Committee for Income Tax Interventions and Disputes under Royal Order No. (26040) of 21/04/1441 AH, and since the case was filed by a party with statutory nature and within the prescribed regulatory period, the Chamber must accept the case in terms of form.

On Merits: Upon reviewing the case files by the Chamber and the requests, defenses, and arguments presented by the parties, and since the dispute concerns the plaintiff's objection to the defendant's decision regarding the excise goods tax reassessment for the tax period from 01/12/2017 to 31/07/2018, the Chamber finds the following:

First: Clause: Excise Tax Reassessment for the tax period from 01/12/2017 to 31/07/2018: It is evident that the dispute lies in the plaintiff's objection to the defendant's action of canceling ZATCA assessment of an amount of SAR 21,455,585.90 for the period subject to the case. As the Article (11.1) of Common Excise Tax Agreement, states the following: "The Importer must declare the due tax upon import in accordance with the provisions of the Unified Customs Law, and the member state shall specify the payment procedures". Article 15.2 of Excise Tax Implementing Regulations provides that: "Excise Tax shall be imposed on the following goods: A. Tobacco Products. E. Electronic devices and tools used for smoking, vaping and alike. F. Liquids consumed in electronic devices and tools used for smoking, vaping and alike". Article 15.1 of Excise Tax Implementing Regulations provides that: "In case of importing excise goods and placing them for consumption, the General Customs Authority shall calculate the due tax amount based on the tax base, following the procedures specified according to the Unified Customs Law". Article (17.4) of the Executive Regulations of Excise Tax Law also states the following: "The Authority shall inform the person liable for the payment of the Tax with the amount of Tax Due by a written notification." Upon reviewing the entire case file by the Chamber and the defenses included, the Chamber finds that the plaintiff has attached the following documents: A statement of objection in which the plaintiff mentioned that all customs amounts had been paid to the defendant, and that requests for payment had been made multiple times by ZATCA. Additionally, visits were made by ZATCA inspectors, and all necessary requirements were sent. The plaintiff attached a customs clearance statement from 01/01/2018 to 26/03/2019, showing the total value of imports as SAR 1,706,516 and the amount of collected fees as SAR 1,739,282. -Messages via email between the taxpayer and ZATCA indicate the receipt of the objection request. Since Defendant (ZATCA) did not provide evidence to detail and demonstrate the occurrence of any of the three cases exclusively specified in Article 17.1 of the Executive Regulations of Excise Tax Law, which would grant defendant (ZATCA) the authority to assess the due tax on excise goods. Furthermore, Defendant did not submit proof of compliance with the requirements stipulated in paragraphs (4) and (6) of Article 17, which require ZATCA to notify the person liable for paying the tax with a written notice of the due tax amount and to include the basis on which ZATCA



calculated the due tax amount. The adherence to these requirements affects the validity of the decision and the taxpayer's ability to understand ZATCA conduct in tax assessment and exercise its right as a taxpayer to accept or object to it. Therefore, the Chamber concludes to accept Plaintiff's objection in Clause (First) and to annul Defendant's decision.

Second: Late Payment Fine Clause: Plaintiff objection shall be clear regarding the imposition of the late payment fine resulting from the reassessment of the tax period subject to the case. Article (22) of Excise Tax Law states that: "Whoever does not pay the tax due within the period specified by the Regulations shall be fined an amount equaling (5%) of the value of unpaid tax, for each month or fraction of month for which the tax was not paid." Since it was proven to the Chamber in Clause (First) to annul the defendant's (ZATCA) decision, and since it resulted in the late payment fine, any related matter shall have the same ruling and effect. Therefore, the Chamber concludes to annul the defendant's (ZATCA) decision regarding the imposition of the late payment fine.

Based on the foregoing and in accordance with the provisions of Common Agreement, the Value Added Tax Law and its Executive Regulations, and Rules of Tax Dispute and Violation Committee Procedures, the Chamber, after deliberation, unanimously decided:

Decision:

First: To Accept case in form.

Second: To annul the defendant's decision regarding (Excise Tax Reassessment).

Third: To annul the defendant's decision regarding (Late Payment Fine).

This decision was issued in presence of the parties to the case, and the decision will be available for receipt within thirty days through the website of the, and Department may extend the delivery date for another thirty days as it deems fit, and the parties to the case shall have the right to request an appeal of the decision within thirty days from the day following the date specified for receiving the decision.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.

(Final ruling has been acquired upon expiration of objection period in accordance with Article (33.2) of Dispute and Violation Committee Procedures)



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2022-207)

Delivered in Case No. (E-2021-78148)

Keywords:

Excise Tax – Reassessment of the Tax Period – Late Payment Fine – Sugar Free – Free from Natural or Artificial Sweeteners – The Product Subject to Dispute does not fall under 'Sweetened Beverages' that are subject to Excise Tax.

Abstract:

The plaintiff's claim to annul the decision of ZATCA regarding the reassessment for the second and third tax periods of 2020, and the first and second tax periods of 2021, and the resulting late payment fine – ZATCA responded that in terms of formality: The decision has become unchallengeable for being time-barred and is not subject to appeal. On merits: For the third period of 2020, and the first and second periods of 2021: ZATCA clarifies that the plaintiff imported the product subject to case, which was not disclosed in its declaration. Upon examining the product and reviewing its ingredients, it was found to contain sugar, as confirmed by the report from SFDA submitted by the plaintiff. It is evident that the laws and regulations apply definitively to the product, making it subject to excise tax. Based on the foregoing, ZATCA insists on the validity of the reassessment issued by them. And as a result of the plaintiff's violation of the aforementioned statutory articles, which led to due excise tax differences that were not paid, ZATCA imposed a late payment fine. It was proven to the Chamber that the objection to ZATCA was submitted after the regulatory period had expired, and thus the decision has become unchallengeable. As for the tax assessment decisions for the third period of 2020 and the first and second periods of 2021, the case is accepted in terms of form as it was submitted within the regulatory period. And on merits, it was found that the dispute lies in the defendant imposing excise tax on the beverage product (Mammune), for which the excise tax has not been paid upon import. The plaintiff submitted the following grounds included in the case documents: 1/ A picture of the product packaging clearly stating 'Sugar Free – Free from Sweeteners'. 2/ A printed copy of the food products list from SFDA, classifying the product as: Fruit syrup with natural flavors, sugar free, and free from sweeteners. 3/ A certificate issued by .. German limited company indicating that the product does not contain added sweeteners (natural or artificial). 4/ A certificate issued by the German Herbal Research Laboratory indicating that the product does not contain added sweeteners (natural or artificial). Since Plaintiff has demonstrated that the company imports the product in two formulas: one containing sugar substitutes and the other containing no sugar and free from sweeteners, both registered with SFDA under different registration numbers but with the same primary customs codes, it is likely that this is the reason for ZATCA mistake in considering it a sweetened product. Since the plaintiff has submitted evidence that Customs has amended the customs declaration and changed the Tariff Clause to a new number based on an actual inspection in the clearance area, the product description was modified from sweetened to unsweetened. Since all the foregoing was presented to the defendant's representative, who did not refute or contest any of it, this was sufficient to convince the Chamber that the product subject to dispute does not fall under 'sweetened beverages' that are subject to excise tax.



According to the definition of 'sweetened beverages' adopted by the Financial and Economic Cooperation Committee, they are defined to include: "Any product with added sugar or any other sweeteners and produced in the form of ready-to-drink, concentrated, powder, gel, extracts or any other form that can be transformed into a drink," the plaintiff's case regarding the invalidity of subjecting the product to excise tax and the invalidity of the tax reassessment decisions for the third period of 2020 and the first and second periods of 2021, respectively should be accepted. The following: As for the tax differences for the third period of 2020 and the first and second periods of 2021: Since it has been proven to the Chamber that the product subject to dispute does not fall under 'sweetened beverages' subject to excise tax, according to the definition of 'sweetened beverages' adopted by the Financial and Economic Cooperation Committee, they are defined to include: "Any product with added sugar or any other sweeteners and produced in the form of ready-to-drink, concentrated, powder, gel, extracts or any other form that can be transformed into a drink," the plaintiff's case regarding the invalidity of subjecting the product to excise tax and the invalidity of the tax reassessment decisions for the third period of 2020 and the first and second periods of 2021, respectively, and the late payment fine for the third period of 2020 and the first and second periods of 2021 should be accepted. It is evident that the dispute lies in the imposing of the late payment fine for the due tax, which was imposed as a result of the tax assessment conducted by the defendant for tax periods: the third period of 2020 and the first and second periods of 2021. Since Clause "First" concluded the invalidity of subjecting the product to excise tax and the invalidity of the tax assessment decisions for the third period of 2020 and the first and second periods of 2021, respectively, and since it resulted in the late payment fine, any related matter shall have the same ruling and effect Department ruled to Dismissal of the case in form regarding the tax assessment decision for the second tax period of 2020, and acceptance of the case regarding the tax assessment decisions for the tax periods, the third period of 2020 and the first and second periods of 2021, and cancellation of tax assessment decisions for periods; the third of 2020, the first and second of 2021, and the late payment fine for tax due for tax periods; third of 2020, First and Second of 2021.

Documents:

- Articles (2/1) and (17/1) of

Facts:

All praise is due to Allah, prayers and peace be upon the last Prophet Mohammad, and be upon his relatives and all his companions; now therefore:

On Sunday, 09/10/2022, First Department to Adjudicate Selective Goods Tax Violations and Disputes in Riyadh, formed pursuant to Article 67 of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, established by Royal Decree No. (13957) dated 26/02/1444 AH, held its session via video conference in accordance with the remote



video litigation procedures to consider the above-mentioned case. Since the case fulfilled the established regulatory procedures, it was filed with General Secretariat of Zakat, Tax and Customs Committees under the aforementioned number and on 18/10/2021 AD.

The facts of this case are summarized that ..., with National ID Number (...), acting as an Attorney under Power of Attorney Number (...), on behalf of the plaintiff ..., with National ID Number (...), owner of ... Commercial Establishment, Commercial Register Number (...), submitted a case challenging the defendant's decisions regarding the reassessment for the tax periods: the second and third of 2020, and the first and second of 2021, as well as the resulting late payment fine, and requests to annul the defendant's decisions.

Having presented statement of claims to Defendant, it responded as follows: First: In form: As for the second period of 2020: We inform Honorable Committee that Plaintiff did not file an objection to ZATCA within the specified period, according to Article (2) of Rules of Tax Dispute and Violation Committee Procedures. Since ZATCA decision on the reassessment was issued on 01/05/2021, and Plaintiff's objection was submitted on 05/07/2021, there was a lapse of more than 60 days between ZATCA decision date and the objection date. This shall render the decision unchallengeable due to prescription and not subject to appeal under the provisions of Article (3.1) of Rules of Procedure for the Committees. Second: On merits: For the third period of 2020, and the first and second periods of 2021: ZATCA clarifies that Plaintiff imported the product subject to the case, which was not disclosed in Plaintiff's declaration. Upon examining the product and reviewing its ingredients, it was found to contain sugar, as confirmed by the report from SFDA submitted by Plaintiff. Based on Article (2.1), of the Implementing Regulation of Excise Tax Law, and applying the aforementioned Article to the product disputed by Plaintiff, it is definitively applicable, and the product is subject to excise tax. Based on the foregoing, ZATCA insists on the validity of the reassessment issued by them. Based on Article (6) of Common Agreement on Excise Tax of the Gulf Cooperation Council countries, Article (8), and Article (17.1) of the Implementing Regulation of Excise Tax Law, in addition to foregoing and as a result of Plaintiff's violation of the aforementioned statutory articles, which led to due excise tax differences that were not paid, ZATCA imposed a late payment fine based on Article (22) of the Value Added Tax Law. Requests: ZATCA demands Honorable Committee to rule that the claim is inadmissible in form in respect of the second period of 2020, and also to rule that the claim is dismissed in respect of the other periods referred to above.

The Plaintiff submitted a Replication, in which he replied as follows: First: In form: We would like to inform you that the first reassessment by ZATCA was on 16/06/2021 (Attachment 1). We responded to it with ZATCA on 19/06/2021. We were informed (the initial assessment would be approved and Payment invoices would be issued) via email from ZATCA on 25/06/2021 (Attachment 2). This indicates that to date, the initial assessment had not yet been issued, so we can lodge an objection. We submitted our objection to ZATCA on 05/07/2021, which was within 10 days from the date of the initial assessment, and within the regulatory period for objections via the Eirad Portal with the following reference objection numbers: 2381 on 05/07/2021 (Attachment 3), 2482, 2502, and 2503 on 11/07/2021 (Attachment 4). We received notifications of these objections via the email registered with ZATCA. Accordingly, we inform you that we did not exceed the 60-day period for submitting the objection, nor did we exceed the regulatory period. Therefore, ZATCA claim that the case should be inadmissible in terms of formality shall be invalid, according to the supporting and attached documents with dates and documents. Second: On merits: The establishment did not disclose the imported product (Mammune) in its declarations for excise tax, as outlined below: The establishment imports the product Mammune from Germany in two formulas: First: Contains sugar substitutes, specifically Sorbitol, which is mentioned in the product registration with SFDA. Second: Does not contain sugar and is free from sweeteners; it is not subject to excise tax and is registered with SFDA under number ... with the product description: (Fruit



syrup with natural flavors, sugar free, and free from sweeteners), which led to confusion by ZATCA between the two products as they share the same name and barcode, but differ in registration number based on their contents. The claim made by ZATCA that after reviewing the product contents, it was found to contain sugar, as confirmed SFDA report submitted by the plaintiff, is incorrect. Because it was based on a customs sub-code that does not belong to the imported product. It is clarified that there is a main code and four sub-codes. There is supporting evidence: 1/ A letter from the supplier in Germany was obtained, indicating that the product does not contain artificial sweeteners or added sugar. 2/ Company analyzed a sample in specialized laboratories for product component analysis, which confirmed that the product contains no added sugar or artificial sweeteners. Upon reviewing the Customs Service at that time, it was found that there was an error in customs tariff, and the customs declaration was amended with the same number (...) And Tariff Clause was updated to the new number, based on the actual inspection in the customs clearance area.

Customs declaration was amended	Tariff Clause	Product Description
From	...	Preparations for the manufacture of soft drinks (sweetened)
To	...	others (non-sweetened)

Requests: 1/ We request the Honorable Committee to accept the case concerning the second period, as explained above. 2/ Accept the case concerning the other periods mentioned above and to annul the procedures taken by ZATCA in the case. 3/ Cancel the reassessment of excise tax and, consequently, annul the fines.

On Sunday, 02/04/2023, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh, held its first session, which was conducted via video conference according to remote litigation procedures, at 6:00 PM, based on what is stated in Clause No. (2) of Article (15) of Rules of Procedure for the Committees for the Appeals of Tax Violations and Disputes issued by the Royal Order No. (26040) on: 21/04/1441 AH, to consider the case filed by the plaintiff against the defendant, and upon calling the parties to the case, the plaintiff's Attorney, ... Saudi national with ID No. (...), appeared by virtue of Power of Attorney No. (...), and ... Saudi national with ID No. (...), appeared as the defendant's representative, by virtue of Authorization Letter No. (...). On 17/08/1442 AH, issued by the Deputy Governor for Legal Affairs. When asked about Plaintiff's case, Plaintiff's Attorney responded according to the details provided in the memorandum submitted to General Secretariat of the Zakat, Tax, and Customs Committees, maintaining the contents thereof. When the representative of Defendant was asked about their response, they adhered to the reply memorandum filed in the case file. They added that the tax periods subject to the case of plaintiff were issued in separate decisions: one for the third tax period of 2020 and the first and second tax periods of 2021, and another separate decision was issued for the second tax period of 2020. Consequently, they requested Department to allow them additional time to provide proof of this plea, and if provided, Plaintiff should separate these cases. Accordingly, Department decided to adjourn case to next session, scheduled on Sunday 09/10/2022 AD at 04:00 PM, provided that Plaintiff submits his reply one week before session date.

On Sunday, 09/10/2022, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh, held its second session, which was conducted via video conference according to remote litigation procedures, at 6:30 PM, based on what is stated in Clause No. (2) of Article (15) of Rules of Procedure for the Committees for the Appeals of Tax Violations and Disputes issued by the Royal Order No.: (26040), dated 21/04/1441 AH, to consider the case filed by the plaintiff against the defendant, and upon calling the parties to the case, the plaintiff's Attorney, ... Saudi national with ID No. (...), appeared by virtue of Power of Attorney No. (...), and ... Saudi national with ID No. (...), appeared as the defendant's representative, by virtue of Authorization Letter No. (...). On .. /08/1442 AH, issued by the



Deputy Governor for Legal Affairs. When asked about the case, Plaintiff's representative responded according to the details provided in the memorandum submitted to General Secretariat of the Zakat, Tax, and Customs Committees, maintaining the contents thereof. When the representative of Defendant was asked about their response, they adhered to the reply memorandum filed in the case file. when asked if either of them had any other statements, both parties answered that they hadn't. Accordingly, Department decided to close pleading and adjourn session for deliberation before issuing decision.

Grounds:

Having reviewed Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/1/1425 AH , as amended, and its Implementing Regulations issued by Minister of Finance Decision No. (1535) of 11/06/1425 AH , as amended, Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH , as amended, Implementing Regulations of the Law issued by the Decision of Board of Directors of General Authority of Zakat and Income (currently ZATCA) No. (2-3-19) dated 10/09/1440 AH , as amended, and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant laws, regulations and decisions.

In form, since Plaintiff aims to annul the decisions of Defendant regarding the reassessment for the second and third tax periods of 2020, and the first and second tax periods of 2021, as well as the resulting late payment fine in accordance with Excise Tax Law and its executive regulations. Since this dispute qualifies as a tax dispute, it falls within the jurisdiction of the Committee to Adjudicate Excise Goods Tax Violations and Disputes according to Royal Decree No. (26040) on 21/04/1441 AH. And since it is established from the case files that Plaintiff was notified of the tax assessment decision by ZATCA for the second period of 2020 on 1/5/2021, and that Plaintiff's objection to the decision subject to the appeal was submitted to ZATCA on 5/7/2021, the objection was made after the regulatory period had expired according to Article 2 of Rules of Procedure for the Committees for the Appeals of Tax Violations and Disputes and after the decision has become unchallengeable according to Article 3.1 of the same rules. And it has also been proven that Plaintiff was notified of the tax assessment decisions for the third period of 2020 and the first and second periods of 2021 on 25/06/2021, and that Plaintiff's objection to these decisions was submitted to ZATCA on 11/07/2021. Since the notification of the objection result was on 19/9/2021, and the case was filed with the Secretariat General of the Committees on 18/10/2021, Plaintiff's objection to the tax assessment decisions for these periods and the appeal case were submitted within the regulatory periods in accordance with Article 2 of Rules of Procedure for the Committees for the Appeals of Tax Violations and Disputes. Accordingly, the case should be dismissed in form concerning the assessment decision for the second period of 2020, and accepted concerning the tax assessment decisions for the third period of 2020 and the first and second periods of 2021.

On merits, upon reviewing the case files by Department and the requests, defenses, and arguments presented by the parties, the dispute on merits revolves around Defendant imposing excise tax on the beverage product (Mammune) — for which the excise tax was not paid upon import — by issuing a subsequent tax assessment for the second and third periods of 2020, and the first and second periods of 2021, based on Article (17.1) of the Executive Regulations of Excise Tax Law, which authorized it to calculate the amount of excise tax due on excise goods if the person liable for the payment of the tax due did not comply with the conditions for submitting an import permit, submitted an invalid import permit, or did not comply with the conditions for filing an excise tax declaration. The plaintiff submitted the following grounds included in the case documents: 1/ Picture of product packaging clearly stating 'Sugar Free – Free from Sweeteners' 2/ A printed copy of the food products list from SFDA, classifying the product as: “Fruit syrup with natural flavors, sugar free, and free from



sweeteners". 3/ A certificate issued by .. German limited company indicating that the product does not contain added sweeteners (natural or artificial). 4/ A certificate issued by the German Herbal Research Laboratory indicating that the product does not contain added sweeteners (natural or artificial). Since Plaintiff has demonstrated that the company imports the product in two formulas: one containing sugar substitutes and the other containing no sugar and free from sweeteners, both registered with SFDA under different registration numbers but with the same primary customs codes, it is likely that this is the reason for ZATCA mistake in considering it a sweetened product. Since the plaintiff has submitted evidence that Customs has amended the customs declaration and changed the Tariff Clause to a new number based on an actual inspection in the clearance area, the product description was modified from sweetened to unsweetened. Since all the foregoing was presented to Defendant's representative, who did not refute or contest any of it, this was sufficient to convince Department that the product subject to dispute does not fall under 'sweetened beverages' that are subject to excise tax according to Article 2.1 of the executive regulations of the Law. According to the definition of 'sweetened beverages' adopted by the Financial and Economic Cooperation Committee, they are defined to include: "Any product with added sugar or any other sweeteners and produced in the form of ready-to-drink, concentrated, powder, gel, extracts or any other form that can be transformed into a drink," the plaintiff's case regarding the invalidity of subjecting the product to excise tax and the invalidity of the tax reassessment decisions for the third period of 2020 and the first and second periods of 2021, respectively should be accepted. The following:

First: Tax differences for the third period of 2020 and the first and second periods of 2021: Since it has been proven to the Chamber that the product subject to dispute does not fall under 'sweetened beverages' subject to excise tax in accordance with Article 2.1 of the executive regulations of the Law, according to the definition of 'sweetened beverages' adopted by the Financial and Economic Cooperation Committee, they are defined to include: "Any product with added sugar or any other sweeteners and produced in the form of ready-to-drink, concentrated, powder, gel, extracts or any other form that can be transformed into a drink," the plaintiff's case regarding the invalidity of subjecting the product to excise tax and the invalidity of the tax reassessment decisions for the third period of 2020 and the first and second periods of 2021, respectively should be accepted.

Second: The late payment fine Clause for the tax periods, the third period of 2020 and the first and second periods of 2021: It is evident that the dispute lies in the imposing of the late payment fine for the due tax, which was imposed as a result of the tax assessment conducted by Defendant for tax periods: the third period of 2020 and the first and second periods of 2021. Since Clause "First" concluded the invalidity of subjecting the product to excise tax and the invalidity of the tax assessment decisions for the third period of 2020 and the first and second periods of 2021, respectively, and since it resulted in the late payment fine, any related matter shall have the same ruling and effect. Consequently, Department concludes to annul the late payment fines associated with the tax differences for the mentioned periods.

Decision:

First: Dismissal of the case in terms of formality regarding the tax assessment decision for the second tax period of 2020, and acceptance of the case regarding the tax assessment decisions for the tax periods; the third period of 2020 and the first and second periods of 2021.

Second: Annulment of the tax assessment decisions for the third period of 2020 and the first and second periods of 2021.

Third: Annulment of the decisions to impose late payment fine for the unpaid tax due for the tax periods; the third period of 2020 and the first and second periods of 2021.



This decision was issued in presence of both parties. Department set thirty (30) days from date for receiving copy of decision, and may extend delivery date for another (30) days. Parties hereto may request to appeal decision within thirty (30) days from the day following the date specified for its receipt. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.

Appeal Committee:

Appeal Committee ruled to uphold Department decision.



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2022-210)

Delivered in Case No. (E-95167-2022)

Keywords:

Excise Tax – Reassessment of the Tax Period – Regulatory Period – Tax Differences – Clearance of Plaintiff Goods from Customs – ZATCA Notification Failure to Include the Grounds Used in Calculating the Amount of Tax Due on the Taxpayer – Annulment of Defendant Decision.

Abstract:

The plaintiff demands the annulment of the decision of ZATCA regarding the reassessment for the fourth tax period of 2018. ZATCA responded that Plaintiff did not file an objection to ZATCA within the specified period according to Rules of Procedure for Tax Disputes and Violations Committee. Since ZATCA decision was issued on 08/07/2021, and Plaintiff's objection was on 19/10/2021, there was a lapse of more than 60 days between ZATCA decision date and the objection date. Therefore, appealed decision shall be unchallengeable for being time-barred and is not subject to appeal according to the provisions of Article (3.1) of Rules of Procedure for the Committees. Requests: Based on the foregoing, ZATCA requests the Honorable Committee to rule that the case is inadmissible in form for the reasons explained above. ZATCA also reserves the right to provide further replies and clarifications before the closing of the pleading. It was proven to Department that the dispute revolves around Plaintiff's objection to Defendant's decision regarding the reassessment of the fourth tax period for the year 2018. Accordingly, Department finds the following: Tax Differences Item: Whereas Defendant relied on Article 17 (prior to the recent amendments) of the Executive Regulations of Excise Tax Law for the tax reassessment, and whereas paragraph one of the mentioned Article specifies exclusively the cases in which Defendant is authorized to reassess, and whereas Defendant did not present any details or proof confirming any of such cases, and whereas it was found from the case documents, upon review, that Plaintiff's goods were cleared through customs based on a valid import permit and tax declaration, without any reservations from the General Customs Authority. Whereas paragraphs (3 and 4) of Article 17 of the Executive Regulations of Excise Tax Law focused on the exercise of this authority with guarantees, which include Defendant notifying the person liable for paying the tax with a written notice of the amount of tax due, and that the notice includes the bases used by ZATCA in calculating the amount of tax due, and whereas Defendant was found not to consider these guarantees and substantive aspects, and whereas the neglect of these guarantees and substantive aspects affects the validity of the decision and the taxpayer's ability to understand Defendant's conduct in the tax assessment. Based on the Sharia 'do no harm' principle, and since reverting to the plaintiff after a period of time without proving intent of tax evasion will cause harm to the plaintiff in a manner that is inconsistent with the necessities and requirements of justice. Department ruled to Annulment of the defendant's decision regarding the imposition of tax differences.



Documents:

- Articles (4/17,4) of <https://ncar.gov.sa/document-details/eyJpdjI6IklkFGUkg5WVNqOVMxcDhvdWMwZ3lGN2c9PSIsInZhbHVlIjojSWprZnl5K3FnTi9mc04vS3ErNzZQdz09IiwibWFjIjojZDA0NGNhOWNhYzM5NTZiZTRjZTYzYWE5YTFjZTljNzE5YzAxYjlkOTk4YTUkYjYxZDMwZGQyZTdlMWZhNzkxNiIsInRhZyI6Ij9> Implementing Regulation of Excise Tax Law issued by the decision of the Board of ZATCA, No. (2-3-19), on 10/09/1440 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 07/11/2022, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) of 15/1/1425 AH and its amendments, and constituted by Royal Order No. (13957) of 26/02/1444 AH, held its session via audio and video conferencing to consider the case filed by Plaintiff/, against ZATCA. Since the case met the prescribed legal requirements, it was filed with General Secretariat of the Tax Committees on 11/02/2022 AD.

The facts of this case are summed up so as... National ID Number: (...) Being owner of ... Trading Corporation, registered under C.R. No. : (...) has submitted a statement of case objecting to the defendant's decision regarding the reassessment for the fourth tax period of 2018, requesting the annulment of the defendant's decision.

Having presented statement of claims to Defendant, it responded as follows: We inform Honorable Committee that Plaintiff did not file an objection to ZATCA within the specified period according to the provisions of Rules of Procedure for Tax Disputes and Violations Committee, as Article (2) of these rules stipulates: "Any person against whom a decision has been issued by ZATCA may file an objection before it within 60 days from the date of notification thereof." Since ZATCA decision was issued on 08/07/2021, and Plaintiff's objection was on 19/10/2021, there was a lapse of more than 60 days between ZATCA decision date and the objection date. Therefore, appealed decision shall be unchallengeable for being time-barred and is not subject to appeal according to the provisions of Article (3.1) of Rules of Tax Dispute and Violation Committee Procedures. Requests: Based on the foregoing, ZATCA requests the Honorable Committee to rule that the case is inadmissible in form for the reasons explained above. ZATCA also reserves the right to provide further replies and clarifications before the closing of the pleading.

On Sunday, 09/10/2022, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh, held its session, which was conducted via video conference according to remote litigation procedures, at 5:30 PM, based on what is stated in Clause No. (2) of Article (15) of Rules of Tax Dispute and Violation Committee Procedures issued by the Royal Order No.: (26040), dated 21/04/1441 AH to consider case filed by Plaintiff against Defendant .. Having called parties to case, Plaintiff attorney, (Nationality), holding National ID No., appointed under power of attorney No., and Mr. appeared ID No. (.....), in her capacity as Defendant Attorney, by Authorization Letter No. (...) dated ... Issued by the Deputy Governor for Legal Affairs. When asking about Plaintiff's case, Plaintiff's Attorney responded according to the details provided in the memorandum submitted to General Secretariat of the Zakat, Tax, and Customs Committees, maintaining the contents thereof. They added that there was no clear mechanism for the taxpayer to submit their objection to ZATCA within the prescribed periods and requested time to present proof of this. When asking Defendant's representative about their response, they reiterated what was



stated in the rejoinder filed in the case file, adding that all decisions issued by ZATCA specify the mechanism for objections to be submitted before ZATCA. when asked if either of them had any other statements, both parties answered that they hadn't. Accordingly, Department decided to adjourn case to next session, scheduled on Sunday, 23/10/2022, at 4:00 PM, provided that the Attorney of the defendant submits the documents it required time for, within a maximum of seven days from this date. The defendant shall provide a copy of the issued decision notified to the plaintiff regarding this case within a maximum of seven days from this date. On 19/10/2022, the plaintiff submitted a request to resume the proceedings of the case. The defendant submitted a rejoinder, stating: "The principle in decision-making is validity and soundness, and whoever claims otherwise must provide evidence to support their case. Based on paragraph (1) of Article (17) of the regulations, which states that: "ZATCA shall calculate the Tax Due amount on Excise Goods, in accordance with the provisions of the Regulations; if the person liable for the payment of the Tax due fails to comply with the conditions to file an import declaration or submitted an incorrect import declaration" and Paragraph (2) of the same Article: "For the purposes of this Article, an incorrect import declaration or Excise Tax Return shall mean any import declaration or Excise Tax Return which has led to an incorrect calculation of the Tax Due. It was found that there are excise tax differences that were not paid upon import, as the value of the excise goods on which the excise tax was imposed by ZATCA is not based on retail sale prices." in addition to the invalidity of disclosure regarding the quantity of imported goods and products, this is contrary to the executive regulations of Excise Tax Law and the provisions of the agreement, according to the definition in Article One of the tax base: "The value of Excise Good on which Tax is imposed, equals to the retail sales price determined by Importer or Producer, or the standard price agreed on these goods in accordance with the Agreement, whichever is higher; exclusive of the Tax due and VAT." And based on the provisions of paragraph (3) of Article (8) of the Executive Regulations of Excise Tax Law: "If no or insufficient evidence is provided in accordance with the second (2) paragraph of this Article or if ZATCA or the Saudi Customs has reasonable doubt with respect to the validity of the declared retail sales price, ZATCA or Saudi Customs shall have the right to reject such prices and determine the correct price to be used for calculating the Tax Due, in accordance with the provisions of the Regulations." And since Plaintiff did not comply with the conditions for submitting the excise tax declaration and submitted an invalid declaration, resulting in an incorrect calculation of the excise tax, as the tax was calculated on the box rather than on the retail sale price of the individual unit, this constitutes a violation of the provisions of Article (17) of the Executive Regulations of Excise Tax Law. Accordingly, ZATCA adjusted the tax declaration after modifying the unit of measurement, and then recalculated the tax payable to ZATCA. Regarding the late payment fine, a late payment fine was imposed for the months following the tax period in question, in accordance with the provisions of Article (22) of Excise Tax Law, which states that: "Whoever does not pay the tax due within the period specified by the Regulations shall be fined an amount equaling (5%) of the value of unpaid tax, for each month or fraction of month for which the tax was not paid." Second: Requests: ZATCA requests the Honorable Committee to rule with dismissing the case for the reasons explained above. ZATCA also reserves the right to provide further replies and clarifications before the closing of the pleading.

On Monday, 07/11/2022, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh, held its session, which was conducted via video conference according to remote litigation procedures, based on what is stated in Clause No. (2) of Article (15) of Rules of Tax Dispute and Violation Committee Procedures issued by the Royal Order No.: (26040), dated 21/04/1441 AH to consider the case filed by Plaintiff against Defendant.. Having called the parties to the case; appeared (..... nationality), holding National ID No. (...), in her capacity as Plaintiff attorney under power of attorney no. (...), and appeared, (..... nationality), holder of national ID (...), as Defendant representative, under Letter of



Authorization no (...) dated..., issued by Deputy Governor for Legal Affairs. After discussing with both parties to the case, and asking the representative of the defendant regarding their previous request to provide proof that ZATCA had notified the taxpayer of its decision, the representative responded that the defendant is waiving the formality aspect, which was submitted in the annexed rejoinder, that addressed the merits aspects without delving into formality matters. When asking Plaintiff's Attorney on the merits aspect of the case subject and the requests mentioned, that their client case is to request to annul ZATCA decision regarding the reassessment. Regarding the late payment fine, Plaintiff benefited from the exemption initiative. Therefore, Plaintiff's objection is limited to requesting the annulment of ZATCA reassessment decision. ZATCA decision was based on standard prices, which were not published at the time, preventing the taxpayer from being aware of them and thus from submitting a tax declaration according to such prices. When asked about the knowledge and publication of the standard prices used for calculating excise tax, the representative of Defendant responded that the standard price was not published by ZATCA at that time. Instead, the taxpayer was expected to contact ZATCA to obtain the standard price for the commodity subject to excise tax. When asked about the legal ground for such a practice, the representative stated that there was no legal ground obligating the taxpayer to do so. It was rather a practice followed at the beginning of ZATCA exercise its tax duties. Consequently, Department decided to adjourn the session for deliberation in preparation for issuing a decision.

Grounds:

Having reviewed Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/1/1425 AH , as amended, and its Implementing Regulations issued by Minister of Finance Decision No. (1535) of 11/06/1425 AH , as amended, Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH , as amended, Implementing Regulations of the Law issued by the Decision of Board of Directors of General Authority of Zakat and Income (currently ZATCA) No. (2-3-19) dated 10/09/1440 AH , as amended, and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant laws, regulations and decisions.

In form, since Plaintiff aims to annul the decisions of Defendant regarding the reassessment for the fourth tax period of 2018, in accordance with Excise Tax Law and its executive regulations. Since this dispute qualifies as a tax dispute, it falls within the jurisdiction of First Department to Adjudicate Excise Goods Tax Violations and Disputes according to Royal Decree No. (26040) on 21/04/1441 AH. Given that the case was filed by a party with statutory nature, and considering that Defendant, who is legally responsible for notifying and informing taxpayers about tax reassessment decisions according to Article (17), Paragraph (3) of Excise Tax Law's executive regulations (prior to the last amendment), failed to prove that Plaintiff was aware of or had been notified of the decision more than sixty days prior to their objection, and only relied on the decision's issue date of 08/07/2021, which cannot be used to calculate the objection period within which Defendant's decisions may be challenged, as the notification or decision date is what counts rather than the issuance date, Department should accept the case in form.

On merits, Department reviewed the case files and the requests, defenses and pleas entered by parties thereto, and since the dispute lies in Plaintiff objection to Defendant decisions regarding the reassessment of the fourth tax period of 2018. Therefore, Department found that:

Tax Differences Item: Whereas Defendant relied on Article 17 (prior to the recent amendments) of the Executive Regulations of Excise Tax Law for the tax reassessment, and whereas paragraph one of the mentioned Article specifies exclusively the cases in which Defendant is authorized to reassess, and whereas Defendant did not present any details or



proof confirming any of such cases, and whereas it was found from the case documents, upon review, that Plaintiff's goods were cleared through customs based on a valid import permit and tax declaration, without any reservations from the General Customs Authority. Whereas paragraphs (3 and 4) of Article (17 of the Executive Regulations of Excise Tax Law focused on the exercise of this authority with guarantees, which include Defendant notifying the person liable for paying the tax with a written notice of the amount of tax due, and that the notice includes the bases used by ZATCA in calculating the amount of tax due, and whereas Defendant was found not to consider these guarantees and substantive aspects, and whereas the neglect of these guarantees and substantive aspects affects the validity of the decision and the taxpayer's ability to understand Defendant's conduct in the tax assessment, and based on Sharia principle: 'do no harm', and since reverting to the plaintiff after a period of time without proving intent of tax evasion will cause harm to the plaintiff in a manner that is inconsistent with the necessities and requirements of justice. Accordingly, Department should annul Defendant's decision regarding the tax assessment subject to the case.

Decision:

First: To Accept case in form.

Second: Annulment of the defendant's decision regarding the imposition of tax differences.

This decision was issued in presence of both parties. Department set thirty (30) days from date for receiving copy of decision, and may extend delivery date for another (30) days. Parties hereto may request to appeal decision within thirty (30) days from the day following the date specified for its receipt. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof. Date of uploading decision to General Secretariat electronic system shall be deemed the date of decision delivery.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.

Judgment has become final because disputed amount is less than SAR 50,000 (fifty thousand riyals) pursuant to Article 33.1 of Tax Dispute and Violation Committee Procedures of Zakat, Tax and Customs Committees.



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2022-224)

Delivered in Case No. (E-75948-2021)

Keywords:

Excise Tax - Storage Warehouses - Sugar Existence - Natural or Concentrated Sweeteners - Fruit Juice

Abstract:

Plaintiff filed a case seeking cancellation of ZATCA decision regarding imposition of Excise Tax. - ZATCA responded that decision is presumed to be valid and sound, and whoever claims otherwise shall provide proof supporting his claims. ZATCA initially refers to a letter received from SFDA stating that SFDA, pursuant to powers granted thereto by law, had exercised its executive and supervisory tasks and conducted an inspection campaign on storage warehouses and juice production factories to verify their compliance with standard laws, legislations, and specifications issued by Standard GSO, as well as unified Gulf technical regulations and Saudi technical regulations, regarding juice products labeled as "sugar-free or no added sugar." This inspection campaign resulted in detection of a number of non-compliant products from Plaintiff. Added sugar (natural or concentrated sweeteners) was found in the product "purple berry juice" and "white tea and peach syrup" As such, SFDA applied the food law, and notified ZATCA to take necessary regulatory measures according to its jurisdiction. Article 2.1 of Excise Tax Implementing Regulations states: "Excise Tax shall be imposed on the following goods: D. Sweetened Drinks". Additionally, according to decision of GCC Financial and Economic Cooperation Committee - Ministerial Committee No. 42/19/2/4/ I/S, dated 09/05/2019, Sweetened Drinks are defined as: "Any product to which a source of sugar or other sweeteners is added, which is produced for the purpose of consumption as a beverage, whether as a ready-to-drink beverage, or in the form of concentrates, powders, gels, extracts, or any other types that can be converted into a beverage by consumption." Moreover, Saudi Regulation for Nutritional Data Requirements on Card No. (FD2233. SFDA) defines added sugars as: "Sugars added during food processing, or packaged as such, including sugars (monosaccharides and disaccharides), sugars from syrup and honey, and sugars from concentrated fruit or vegetable juice that exceed what would be expected from the same quantity of 100% fruit or vegetable juice of the same type." Based on the above, ZATCA subjected the aforementioned Plaintiff products in the results of SFDA laboratories to Excise Goods Tax and calculated the tax due thereon. - Department has determined that dispute lies in Plaintiff objection to Defendant decision to impose an excise tax of (SAR 131,152.59) on disputed goods (purple berry juice, white tea and peach syrup), arguing that they are not sweetened drinks, being free from sugar or any other added sweeteners. However, Defendant argues that it was notified by SFDA that there is added sugar in these products. Having reviewed case file including contained arguments, it becomes evident that Plaintiff attached analysis reports for the two drinks issued by (...) Company. which show that disputed products are free of sweeteners and do not contain added sugar. Meanwhile, Defendant failed to attach the letter claimed to be received from SFDA, which includes a record of a number of non-compliant products from Plaintiff due to existence of added sugar (natural or concentrates



sweeteners) in product "purple berry juice" and "white tea peach syrup" - as stated in its Reply. Therefore, Department ruled the following: Canceling Defendant decisions subject to this Case.

Facts:

All praise is due to Allah, prayers and peace be upon the last Prophet Mohammad, and be upon his relatives and all his companions; now therefore:

On Sunday, 04/12/2022, First Department to Adjudicate Selective Goods Tax Violations and Disputes in Riyadh, formed pursuant to Article 67 of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, established by Royal Decree No. (13957) dated 26/02/1444 AH, held its session via video conference in accordance with the remote video litigation procedures to consider the above-mentioned case. Since the case fulfilled the established regulatory procedures, it was filed with General Secretariat of Zakat, Tax and Customs Committees under the aforementioned number and on 06/12/2021 AD.

Facts of this case are as follows:Company. LLC, with C.R. No. (...), has filed through, ID No. (...), in his capacity as Plaintiff Attorney, under POA No. (...), a statement of claim objecting Defendant decision regarding imposition of Excise Goods Tax, and requested cancellation of Defendant decision.

Having presented statement of claims to Defendant, it responded as follows: 1. Decision is presumed to be valid and sound, and whoever claims otherwise shall provide proof supporting his claims. 2. ZATCA initially refers to a letter received from SFDA stating that SFDA, pursuant to powers granted thereto by law, had exercised its executive and supervisory tasks and conducted an inspection campaign on storage warehouses and juice production factories to verify their compliance with standard laws, legislations, and specifications issued by Standard GSO, as well as unified Gulf technical regulations and Saudi technical regulations, regarding juice products labeled as "sugar-free or no added sugar." This inspection campaign resulted in detection of a number of non-compliant products from Plaintiff. Added sugar (natural or concentrated sweeteners) was found in the product "purple berry juice" and "white tea and peach syrup" As such, SFDA applied the food law, and notified ZATCA to take necessary regulatory measures according to its jurisdiction. 3. Article 2.1 of Excise Tax Implementing Regulations states: "Excise Tax shall be imposed on the following goods: D. Sweetened Drinks". Additionally, according to decision of GCC Financial and Economic Cooperation Committee - Ministerial Committee No. 42/19/2/4/ I/S, dated 09/05/2019, Sweetened Drinks are defined as: "Any product to which a source of sugar or other sweeteners is added, which is produced for the purpose of consumption as a beverage, whether as a ready-to-drink beverage, or in the form of concentrates, powders, gels, extracts, or any other types that can be converted into a beverage by consumption." Moreover, Saudi Regulation for Nutritional Data Requirements on Card No. (FD2233. SFDA) defines added sugars as: "Sugars added during food processing, or packaged as such, including sugars (monosaccharides and disaccharides), sugars from syrup and honey, and sugars from concentrated fruit or vegetable juice that exceed what would be expected from the same quantity of 100% fruit or vegetable juice of the same type." Based on the above, ZATCA , pursuant to the powers granted to it under Article 17.1 of Implementing Regulations of Excise Tax Law subjected the aforementioned Plaintiff products in the results of SFDA laboratories to the Excise Goods Tax and calculated the tax due thereon. Requests: ZATCA requests Honorable Committee to dismiss the case for grounds stated above and to uphold ZATCA decision. ZATCA also reserves the right to provide further responses and clarifications before pleadings closure.

On Sunday, 21/11/2021, The First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh convened a session remotely in accordance with the remote virtual litigation procedures; pursuant to the provisions of Article 15.2 of the Rules of Procedure for



Committees for Resolution of Tax Violations and Disputes issued by Royal Decree No. (26040) and dated: 21/04/1441 AH to consider the case filed by Plaintiff against Defendant. When Parties to case were called, Saudi, C.R. No. ... In his capacity as Plaintiff Attorney, by POA No. (.....), and .Mr. ID No. (.....), in his capacity as Defendant Attorney, by Authorization Letter No. (...) Dated ../08/1442 AH, issued by Deputy Governor for Legal Affairs. Upon questioning Plaintiff Attorney about Plaintiff claim, he responded in accordance with the statement of claim submitted to General Secretariat of Zakat, Tax, and Customs Committees and insisted on what was stated therein. Upon questioning Defendant Attorney about its response, it responded by insisting on what was stated in the Reply, wherein Defendant Attorney submitted a letter issued by SFDA arguing that the goods in dispute contain a source of sugar. After reviewing the case file, the court decided to postpone the continuation of the hearing, and requested that Plaintiff respond to what was presented by Defendant Attorney, with the response to be submitted no later than 28/11/2021. Defendant is to review what is submitted by Plaintiff and respond no later than 05/12/2021. The continuation of the hearing was adjourned to Sunday, 12/12/2021, at 5:00 PM.

The Plaintiff submitted a replication, in which she stated: First: SFDA report content and its conclusions did not reach a result based on a thorough examination and analysis of disputed products. Rather, it is clear to esteemed committee that report came from a field inspection of facilities in Jeddah Governorate, and it did not clarify how existence of added sugar in disputed products was determined. Furthermore, report lacked specification of sugar or sweetener added. Instead, it was limited to observing it without including the slightest investigation or research into contents of disputed products. Second: On 18/02/2021, we submitted a report, issued by a Saudi laboratory, confirming absence of added sugar or sweeteners in disputed products. Laboratory analyses concluded that products are free from added sugar or sweeteners. It is worth noting that issuing entity is a facility licensed by Ministry of Environment, Water and Agriculture (MEWA), Saudi Food and Drug Authority (SFDA), Saudi Accreditation Committee (SAC), and Gulf Accreditation Center (GAC). Third: We would like to inform the esteemed committee that disputed products have received certificates of conformity from Emirates Authority for Standardization & Metrology (ESMA). Therefore, we request that the esteemed committee cancel ZATCA decision to impose the excise tax.

The defendant submitted a rejoinder, stating: We would like to clarify to the esteemed court that everything stated in Plaintiff memorandum does not align with what was explained in ZATCA first Reply. Plaintiff, in its response, relies on external laws to prove the invalidity of ZATCA action. Plaintiff has cited (Emirates Authority for Standardization and Metrology) as evidence that the seized materials are free of sweeteners, which is a flawed citation, and does not apply to the domestic laws of the state and cannot be relied upon, as it is outside the legal system regulating the excise tax in KSA, and is outside the laboratory processing by SFDA and the tax processing issued by ZATCA. Meanwhile, Plaintiff has ignored the "official directive" from SFDA, which showed, through field inspection rounds of Plaintiff warehouses, the presence of added sugar (natural sweetener or concentrates) in the products. Therefore, ZATCA requests the esteemed committee to rule to dismiss the Case for the reasons stated above and to uphold ZATCA action that are the subject of the Case. ZATCA also reserves the right to provide further responses and clarifications before pleadings closure.

On Sunday, 12/12/2021, The First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh convened a session remotely in accordance with the remote virtual litigation procedures; pursuant to the provisions of Article 15.2 of the Rules of Procedure for Committees for Resolution of Tax Violations and Disputes issued by Royal Decree No. (26040) and dated: 21/04/1441 AH to consider the case filed by Plaintiff against Defendant. When Parties to case were called, Saudi, Civil Registration No. ... In his capacity as Plaintiff Attorney by POA No (.....), and in his capacity as Defendant Attorney, by Authorization Letter No. (...), dated ../08/1442 AH, issued by Deputy Governor for Legal



Affairs. Upon reviewing the case file and examining the documents submitted by both parties to the case, Department decided that General Secretariat of Zakat, Tax and Customs Committees should contact a neutral, accredited entity within the country to conduct an analysis on a sample of the disputed products (purple berry juice, white tea peach syrup). The purpose of this analysis is to determine whether these products contain added sugar (natural sweeteners or concentrates) or any other added sweeteners. Therefore, Department has decided to postpone the hearing until a later date after the results of the analysis are received by the Secretariat.

On Sunday, 26/06/2021, The First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh convened a session remotely in accordance with the remote virtual litigation procedures; pursuant to the provisions of Article 15.2 of the Rules of Procedure for Committees for Resolution of Tax Violations and Disputes issued by Royal Decree No. (26040) and dated: 21/04/1441 AH; at exactly 06:45 PM to consider the Case filed by Plaintiff against Defendant. Upon Calling the parties to the Case,was present. In his capacity as Plaintiff Company's Attorney, by POA No. (.....), and declared his appearance as attorney for Defendant, under authorization letter No. (...) dated ../08/1442 AH issued by Deputy Governor for Legal Affairs. At the beginning of the session, Department reviewed the case file. Since the Secretariat had not received a response from the neutral entity regarding Department's request, Department decided to suspend the hearing of the case until the neutral entity provides their statement. Additionally, Department ordered the secretariat to send a follow-up letter to the neutral entity. Parties hereto shall make efforts to reach a settlement. Upon reaching an agreement, Secretariat shall be notified to schedule a hearing for considering the case.

On Sunday, 04/12/2021, The First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh convened a session remotely in accordance with the remote virtual litigation procedures; pursuant to the provisions of Article 15.2 of the Rules of Procedure for Committees for Resolution of Tax Violations and Disputes issued by Royal Decree No. (26040) and dated: 21/04/1441 AH; to consider the Case filed by Plaintiff against Defendant. Upon Calling the parties to the Case, (Saudi), holding National ID No. (...) In his capacity as Plaintiff Attorney by POA No. (.....), declared his appearance as attorney for Defendant, under authorization letter No. (...) On ../08/1442 AH, issued by the Deputy Governor for Legal Affairs. After hearing arguments from both parties, and reviewing documents submitted by both parties, including the laboratory report from (...) Center, which indicated that the products were free of sweeteners and therefore not subject to the excise tax, and given that the aforementioned laboratory is licensed by SFDA, whose letter dated (01/11/1442 AH) contradicts the laboratory report, which necessitated contacting SFDA to provide Department with a report on the products subject matter of the Case, and since SFDA has not responded until the date of this session, it is necessary to rule on this case to preserve the rights of the parties. Therefore, Department decided to adjourn the session for deliberation in preparation for a decision.

Grounds:

Having reviewed Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/1/1425 AH , as amended, and its Implementing Regulations issued by Minister of Finance Decision No. (1535) of 11/06/1425 AH , as amended, Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH , as amended, Implementing Regulations of the Law issued by the Decision of Board of Directors of General Authority of Zakat and Income (currently ZATCA) No. (2-3-19) dated 10/09/1440 AH , as amended, and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant laws, regulations and decisions.



In form, since Plaintiff aims through this Case to cancel Defendant decision regarding the imposition of the excise goods tax, based on Excise Tax Law and its Implementing Regulations, and given that this dispute is a tax disputes, it falls within the jurisdiction of the Committee for Resolution of Tax Violations and Disputes, pursuant to Royal Decree No. (26040) dated 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the prescribed statutory period, Department must accept the Case in terms of its form.

On merits, upon careful consideration of case files, including requests, defenses and pleadings submitted by parties thereto, and since dispute centers on Plaintiff objection to Defendant decisions regarding imposition of excise tax amounting (SAR 131,152.59) on disputed goods (purple berry juice, white tea peach syrup), arguing that they are not sweetened drinks since they do not contain sugar or any other added sweeteners. However, Defendant argues that it was notified by SFDA of presence of added sugar in these products. Having reviewed entire case file and arguments contained, it becomes evident that Plaintiff attached analysis reports for the two drinks issued by (...) Company. showing that disputed products are free of sweeteners and added sugar. However, Defendant failed to attach the letter sent to her from SFDA, which it claimed included monitoring a number of violating products from Plaintiff through the existence of added sugar (natural sweeteners or concentrates) in product “purple berry juice” and “white tea peach syrup” - according to what was stated in its Reply, Department concludes by canceling Defendant decision that is the subject of the Case.

Decision:

First: To Accept case in form.

Second: Canceling Defendant decisions subject to this Case.

This decision was issued in presence of both parties. Department set thirty (30) days from date for receiving copy of decision, and may extend delivery date for another (30) days. Parties hereto may request to appeal decision within thirty (30) days from the day following the date specified for its receipt. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof. Date of uploading decision to General Secretariat electronic system shall be deemed the date of decision delivery.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2022-225)

Delivered in Case No. (E-67618-2021)

Keywords:

Excise Tax – Tax Differences – Late Payment Fine– Tax Periods – Sweetened Drinks– The product does not meet the Ministerial Committee’s definition of Sweetened Drinks– The standard prices were not clear or known enough to determine the tax base – The Plaintiff paid the tax according to the prices estimated by customs – Cancellation of the Defendant’s decision..

Abstract:

The Plaintiff is requesting the cancellation of the decision issued by ZATCA regarding Excise Tax for the sixth tax period of 2019, and the resulting fines - ZATCA responded that regarding the Plaintiff’s objection to the ZATCA’s assessment of the due excise tax, ZATCA imposed the due amount of tax on the Plaintiff’s goods in accordance with laws and regulations. Regarding the Plaintiff’s objection to ZATCA’s decision to subject the goods (sweetened drinks) in dispute to the tax, it appears that: 1. (Custard) Category: The Plaintiff company stated in its disclosure during the inspection phase that this product is subject to excise tax, and acknowledged its objection to ZATCA that this product is used in one of its restaurants. Upon reviewing the restaurant's menu by ZATCA, it became clear that there are multiple types of drinks whose main ingredient is (custard), which means that the item is used in sweetened drinks and foods. 2. (Caramel Sauce) Category: Referring to the Plaintiff Company’s statement in its disclosure submitted to ZATCA during the inspection phase that the product is used only for cakes and is not subject to excise tax, and upon its objection to ZATCA, it acknowledged using this item in drinks. In response to the response memorandum submitted by the Plaintiff, ZATCA clarifies that its decision to accept the product (caramel sauce) as a product not subject to excise tax for tax periods (204-205-206) came after the rejection related to the periods in dispute, and that the Plaintiff’s statement that ZATCA had previously issued decisions that the product was not subject to the tax is unfounded. In the absence of an explicit statutory provision that clearly distinguishes between the disputed matters, the administrative authority is entitled to make its decisions according to its discretionary power, which means that ZATCA's decision to accept (caramel sauce) as a product not subject to excise tax for tax periods (204-205-206) was based on its discretionary power at that time, and according to the additional information provided about those periods, it cannot be bound by its decision unless there is a provision, and it may amend its decision in order to correct its conduct in light of the relevant regulations, knowing that when applying the definition of sweetened drinks to the caramel sauce item, it is found to be applicable. 3. (Coconut Mixtures) Category: The Plaintiff stated during the inspection phase that the product is subject to excise tax and contains added sugar, and it was found that it did not meet the conditions for milk substitutes which is contrary to the decision of the Ministerial Committee that specified the conditions for classifying a drink as a milk substitute. 4. (Singing Dog - Vanilla Flavor) Category: Furthermore, the Plaintiff stated during the inspection phase that this product is subject to tax, which confirms the use of the product as a drink, and therefore falls under the concept of sweetened drinks. In



response to the Plaintiff's response memorandum, which stated that: "ZATCA issued a partial acceptance notice for the objection regarding tax periods (204, 205, and 206), whereby ZATCA agreed that the product (Singing Dog - Vanilla Flavor) is not considered a sweetened drink". ZATCA affirms that its decision to accept the product as a product not subject to excise tax for tax periods (204-205-206) is subsequent to the rejection decision related to the periods in dispute, and that the Plaintiff's statement that ZATCA had previously issued decisions that the product was not subject to the tax is unfounded. The correct statement is that ZATCA considered it a non-taxable product in a later period. It is known that the effects of an administrative decision are limited to the purpose for which it was issued. Furthermore, in the absence of an explicit regulatory text that clearly distinguishes between the disputed matters, the administrative authority is entrusted with the power to make its decisions based on its discretion. This implies that ZATCA's decision to accept (Singing Dog - Vanilla Flavor) as a product not subject to excise tax for tax periods (204-205-206) is based on its discretionary power at the time. Therefore, it cannot be bound by its decision unless there is a provision to that effect, especially considering that when applying the definition of sweetened drinks to the item (Singing Dog - Vanilla Flavor), it becomes clear that it could be classified thereunder.

5. (Strawberry Sauce) Category: During the inspection phase, the Plaintiff acknowledged to ZATCA that this product is subject to excise tax. Moreover, in its objection to ZATCA, the Plaintiff stated that this item is used only in cakes. However, it does not prevent its use in beverages, as this product is a gel that dissolves in water and falls under the definition of concentrates subject to excise tax. This confirms the correctness of ZATCA's decision to subject the product to excise tax. Regarding the Plaintiff's objection to the price adopted by ZATCA, ZATCA calculated the tax based on the Plaintiff's disclosure in the import declaration. This confirms the accuracy of the prices adopted by ZATCA for the Plaintiff's items that the Plaintiff objected to regarding the method of calculating their prices. The Department found that, with regard to the item of tax differences, the dispute lies in the final assessment notice for the tax period in dispute, which resulted from subjecting the goods to excise tax, and the details are as follows:

A) (Custard) Category: Upon examining the facts of the case, it becomes clear that the product in dispute is frozen custard, which is used in food production and not beverages. Additionally, the image attached by the Defendant (ZATCA) of the menu and its reliance on it as being used for various items such as beverages is incorrect. The Department found that it is one of the components of ice cream, thus falling outside the definition of sweetened drinks as defined by the Ministerial Committee.

B) (Caramel Sauce) Category: Upon careful examination of the Case and its accompanying defenses, it becomes clear that the Plaintiff has attached an email from ZATCA, which clearly states its acceptance of caramel sauce as not subject to excise tax. Furthermore, as evident from the letter of (.....Company) that it is a type of additive and cannot, by itself, be transformed into a drink. This means that the product does not fit the classification of a sweetened drink, and therefore falls outside the definition of sweetened drinks as defined by the Ministerial Committee.

C) (Coconut Flakes) Category: It is evident from the product image that the sugar content in the product is 0%, and that the product is used in the preparation of cakes, candies, biscuits, and so on. Therefore, the product cannot be considered a sweetened drink.

D) (Singing Dog - Vanilla Flavor) Category: It is evident that ZATCA has accepted the classification of (Singing Dog - Vanilla Flavor) as not subject to excise tax in different tax periods. Additionally, an email from ZATCA has been attached, which clearly states its acceptance of the product in dispute as not subject to excise tax. Furthermore, the letter submitted by the company (... Dog) indicates that the product does not contain sugar and is used in food preparation.

E) (Strawberry Sauce) Category: It is evident that the Plaintiff indicated that it is not subject to tax as it is a food product. Upon examining the letter from the company producing the strawberry sauce, it is clear that they stated its use in food products such as cakes, and therefore, the product does not fall under the ministerial committee's



definition of sweetened drinks. F) White Chocolate Mocha Flavored Drink: It has become clear that the Defendant (ZATCA) relied in its memorandum on its calculation of the tax base according to what the Plaintiff disclosed in the import declaration without providing any evidence to prove the existence of differences. It is clear from the Plaintiff's response that the standard prices were not clear and known in a way that would allow the determination of the tax base price, and that the Plaintiff paid the tax according to the prices estimated by customs. Regarding Late Payment Fine: The Department has established in the first clause the cancellation of the Defendant's decision. Since the late payment fine resulted from that decision, what is connected thereto takes its ruling. Department ruled to Cancel Defendant's decision regarding tax differences for excise tax on goods and late payment fine.

Documents:

- Article (1/1) (1/2/D) of [the Excise Tax Implementing Regulations issued by Decision No. \(2-3-19\) of the Board of Directors of the General Authority for Zakat and Income, dated 10/09/1440 AH-](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday 19/12/2022, the First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH , as amended and Royal Order No. (13957) dated 26/02/1444 AH, held its session via video conferences as per the remote video litigation procedures to consider above-mentioned case. Since the case fulfilled the established regulatory requirements, it was filed with the General Secretariat of the Zakat, Tax and Customs Committees under the above number on 29/08/2021.

The facts of this case are summed up in thatCompany, C.R. No. (...), has filed through, ID No. (.....), in his capacity as Plaintiff's Attorney, by POA No. (.....), a statement of claim that included an objection to the Defendant's decision regarding the imposition of the Excise Goods Tax for the sixth tax periods of 2019, as well as the resulting fines, and requested the cancellation of Defendant's decision.

Having presented statement of claims to Defendant, it responded as follows: First: Regarding the Plaintiff's objection to ZATCA's assessment of the due excise tax subject matter of the Case: ZATCA imposed the amount of tax due on the plaintiff's excise goods in accordance with the provisions of Article (3) of the Common Excise Tax Agreement , and Article (2) of the Implementing Regulations of the Excise Tax law, which states: "Excise Tax shall be imposed on the following goods: (D) - Sweetened Drinks". Additionally, Article 3.4 of the Regulations states that: "A tax rate of 50% shall be applied to sweetened drinks". Second: Regarding the Plaintiff's objection to ZATCA's decision to subject the goods - sweetened drinks- in dispute to the tax at the prescribed rate: ZATCA has subjected the goods in dispute to the tax and calculated the prescribed rate in accordance with the provisions of the articles mentioned above in Article 4.2 of the Common Excise Tax Agreement. ZATCA wishes to draw the attention of the esteemed Committee to the following, upon reviewing the Ministerial Committee's definition of sweetened drinks: 1. (Custard) Category: In its disclosure submitted to the authority during the examination phase, the Plaintiff Company stated that this product is subject to excise tax. It also acknowledged in its objection to ZATCA that this product is used in a restaurant. Upon reviewing the restaurant's menu, it is evident that there are various items such as drinks with custard as their main ingredient, which implies the use of the product in sweetened beverages and foods. 2. (Caramel Sauce) Category Referring to Plaintiff Company's statement in its disclosure submitted to ZATCA during the inspection phase that



the product is used only for cakes and is not subject to excise tax, and upon its objection to ZATCA, it acknowledged using this item in drinks (as explained below). In response to Plaintiff's response memorandum, which stated: "ZATCA issued a partial acceptance notice for the objection regarding tax periods (204, 205, and 206). Pursuant to this notice, ZATCA agreed that the product (caramel sauce) is not considered a sweetened beverage based on a letter from the manufacturing company. ZATCA clarifies that its decision to accept caramel sauce as a product not subject to excise tax for tax periods (204-205-206) came after the rejection related to the periods in dispute, and that Plaintiff's claim that ZATCA had previously issued decisions stating that the product was not subject to tax is unfounded. The correct position is that ZATCA considered it a non-taxable product in a later period based on additional information provided to ZATCA related to the assessments for that period only. It is well-known that the effects of an administrative decision are limited to the purpose for which it was issued. It is therefore not permissible, in any case, to retroactively apply the effects of a later decision to an earlier one. Moreover, in the absence of an explicit statutory provision that clearly settles the disputed matters, the administrative authority is entitled to make its decisions according to its discretionary power. This means that ZATCA's decision to accept caramel sauce as a product not subject to excise tax for tax periods (204-205-206) was based on its discretionary power at the time and according to the additional information provided about those periods. It cannot be bound by its decision unless there is a specific provision, and it has the right to amend its decision in order to correct its course in light of the relevant statutory provisions, especially since the document that was relied upon was issued by a party related to the Plaintiff Company and not a neutral party. Accordingly, ZATCA believes that its position regarding the disputed product is sound based on the aforementioned details. It should be noted that when applying the definition of sweetened drinks to the category of caramel sauce, it is found to be applicable, as the sauce is a food product consumed by humans, and it is also added to sugar. Additionally, it was produced for the purpose of being consumed as a beverage by adding it to coffee. Moreover, the Defendant Company has not provided any evidence to suggest that it cannot be used as a beverage on its own when diluted with water, milk, or any other liquid, similar to concentrates and extracts that can be converted into a beverage. 3. (Coconut Mixtures) Category: During the inspection phase, the Plaintiff stated that the product was subject to excise tax and contained added sugar. Furthermore, upon ZATCA's review of the product's components, it became clear that it did not meet the conditions for milk substitute drinks, as it did not contain 120 mg per 100 ml, which is in violation of the Ministerial Committee's decision, which specified the conditions for classifying the drink as a milk substitute. 4. (Singing Dog - Vanilla Flavor) Category: Furthermore, the Plaintiff stated during the examination phase that this product is subject to tax. Based on this disclosure, it confirms the use of the product as a beverage, and thus falls under the category of sweetened drinks. Replying to the response memorandum submitted by the Plaintiff, which stated: "ZATCA issued a partial acceptance notice for the objection regarding tax periods (204, 205, and 206). Pursuant to this notice, ZATCA agreed that the product (Singing Dog - Vanilla Flavor) is not considered a sweetened drink based on a letter from the manufacturing company. ZATCA affirms that its decision to accept the product as a product not subject to excise tax for tax periods (204-205-206) is subsequent to the rejection related to the disputed periods. Furthermore, ZATCA clarifies that the Plaintiff's claim that ZATCA had previously issued decisions stating that the product was not subject to tax is unfounded. The correct position is that ZATCA considered it a non-taxable product in a later period. It is well-known that the effects of an administrative decision are limited to the purpose for which it was issued. It is therefore not permissible, in any case, to retroactively apply the effects of a later decision to an earlier one. Moreover, in the absence of an explicit statutory provision that clearly settles the disputed matters, the administrative authority is entitled to make its decisions according to its discretionary power. This means that ZATCA's decision to accept (Singing Dog - Vanilla



Flavor) as a product not subject to excise tax for tax periods (204-205-206) was based on its discretionary power at the time. It cannot be bound by its decision unless there is a specific provision, especially since the document that was relied upon was issued by a party related to the Plaintiff Company and not a neutral party. Accordingly, ZATCA believes that its position regarding the disputed product is sound based on the aforementioned details. It should be noted that when applying the definition of sweetened drinks to the category (Singing Dog - Vanilla Flavor), it is found to be applicable, as the sauce is a food product consumed by humans, and it is also added to sugar. Additionally, it was produced for the purpose of being consumed as a beverage by adding it to coffee. Moreover, the Defendant Company has not provided any evidence to suggest that it cannot be used as a beverage on its own when diluted with water, milk, or any other liquid, similar to concentrates and extracts that can be converted into a beverage. 5. (Strawberry Sauce) Category: During the inspection phase, the Plaintiff acknowledged to ZATCA, that this product is subject to excise tax. Moreover, in its objection to ZATCA, the Plaintiff stated that this item is used only in cakes. However, it does not prevent its use in beverages, as this product is a gel that dissolves in water and falls under the definition of concentrates subject to excise tax. This confirms the correctness of the ZATCA's decision to subject the product to excise tax. Regarding the Plaintiff's objection to the price approved by ZATCA: Article 6.2 of the Common Excise Tax Agreement states: "The value on which the tax is imposed on other excisable goods shall be determined based on the retail selling price of these goods, provided that the retail selling price shall be the price determined by the importer or producer of the excisable goods, or according to the standard price list that shall be periodically agreed upon between the tax authorities in the GCC countries, whichever is higher". Since ZATCA calculated the tax based on the Plaintiff's disclosure in the import declaration, the accuracy of the prices adopted by ZATCA regarding the Plaintiff's items whose pricing mechanism is being disputed. Requests: ZATCA requests Honorable Committee to dismiss the case for grounds stated above and to uphold ZATCA decision. ZATCA also reserves the right to provide further responses and clarifications before pleadings closure.

The Plaintiff submitted a replication, in which she stated: First: "Regarding ZATCA's claim that the products are subject to excise tax under the definition of "sweetened drinks," we wish to present our clarifications and evidence to support our argument that our products do not fall under the definition of "sweetened drinks" and, consequently, the reasons why the products are outside the scope of the excise tax in the Kingdom of Saudi Arabia. 1. (Iced Custard Mix) Product: ZATCA has attached a list from one of the Appellant restaurants that offers the product 'custard' as part of its menu. We would like to confirm to Your Excellency that this product is classified under the desserts section as shown on the menu. Therefore, this clearly reflects that the product is used in food preparation, and thus our product cannot be classified as a "sweetened drinks" for the purposes of excise tax in the Kingdom. 2. (Caramel Sauce) Product The Appellant does not agree with ZATCA's position to subject the product to excise tax for the disputed periods (196, 201, 202, 203); as this is inconsistent with previous decisions taken by ZATCA. Based on the presented facts, the excise tax should not be assessed on this product. In this regard, the Plaintiff requests the Secretariat to comply with ZATCA's decision issued in other tax periods for the same product (caramel sauce), and to remove the same from excise tax assessments for the disputed periods (196, 201, 202, 203). 3. (Coconut Mix) Category: ZATCA's arguments for classifying the (coconut) mixture as a 'sweetened drink' cannot be justified, as the product does not contain any additional source of sugar or artificial sweetener and is typically used in food preparation. 4. (Singing Dog - Vanilla Flavor) Based on the presented facts, the excise tax should not be assessed on this product. In this regard, the Plaintiff requests the Secretariat to comply with ZATCA's decision issued in other tax periods for the same product (caramel sauce), and to remove the same from excise tax assessments for the disputed periods (196, 201, 202, 203). 5. (Strawberry Sauce) Product It is not included in food products in any form, regardless of sugar content. Also, this product



cannot be considered a drink on its own, nor can it be converted into a drink. 6. Retail selling price approved by ZATCA for products imported by.... ZATCA has not determined a standard price list for "sweetened drinks" in the Kingdom for the purpose of imposing excise tax, and therefore, taxpayers have the discretion to determine the retail selling price for their supplies in accordance with Article 6. A of the Common Excise Tax Agreement of GCC States.

On Sunday, 13/03/2021, The First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh convened a session remotely in accordance with the remote virtual litigation procedures; pursuant to the provisions of Article 15.2 of the Rules of Procedure for Committees for Resolution of Tax Violations and Disputes issued by Royal Decree No. (26040) and dated: 21/04/1441 AH; to consider the Case filed by Plaintiff against Defendant. Upon Calling the parties to the Case, ID No..... In his capacity as Attorney by POA No. (.....), and (... ID No. (.....)), in her capacity as the Defendant's Attorney, by Authorization Letter No. (...) dated ... issued by the Deputy Governor for Legal Affairs. At the beginning of the session, the Plaintiff's Attorney and the Defendant's Attorney requested that the Case be postponed to a future session, as there were settlement efforts between the parties. Accordingly, the Department decided to postpone the continuation of the hearing of the Case to the session on 13/04/2022 at 9:00 AM, on the condition that the Representative of the Defendant submits her response to the Plaintiff's Attorney's memorandum, in the event that the parties do not reach a final settlement of the dispute, in accordance with the provisions of Article (21) of the Rules of Procedure for Committees for Resolving Tax Violations and Disputes

On Sunday, 21/08/2022, The First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh held its session remotely in accordance with the remote virtual litigation procedures; pursuant to the provisions of Article 15.2 of the Rules of Procedure for Committees for Resolution of Tax Violations and Disputes issued by Royal Decree No. (26040), dated 21/04/1441 to consider the Case filed by the Plaintiff against the Defendant, and upon calling the parties to the Case, no one representing the Plaintiff was present despite being legally notified of the session date, and (... Mr....., anational, holding National ID No..... appeared as representative of Defendant by virtue of authorization No. dated ..., issued by the Deputy Governor for Legal Affairs. Based on the information available in its file, the Department did not find that the Case is ready to be adjudicated. Accordingly, the Department unanimously decided to dismiss the Case, in accordance with the provisions of Article 20.2 of the Rules of Procedure for Committees for Resolving Tax Violations and Disputes.

On 06/09/2022, the Plaintiff submitted a request to reopen the Case.

On Monday, 19/12/2022, First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh, held its session, which was conducted via video conference according to remote litigation procedures, based on what is stated in Clause No. (2) of Article (15) of Rules of Tax Dispute and Violation Committee Procedures issued by the Royal Order No.: (26040), dated 21/04/1441 AH; to consider the Case filed by the Plaintiff against the Defendant.. Upon Calling the parties to the Case, (..... nationality), holding National ID No. (...), In his capacity as the Plaintiff's Attorney by POA No. (.....), and ID No. (.....), in her capacity as Defendant Attorney, by Authorization Letter No. (...) dated....., issued by Deputy Governor for Legal Affairs. After discussing the Case with both parties, the Department decided to adjourn the session for deliberation in preparation for issuing the decision.

Grounds:

Having reviewed Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/1/1425 AH , as amended, and its Implementing Regulations issued by Minister of Finance Decision No. (1535) of 11/06/1425 AH , as amended, Excise Tax Law promulgated by Royal Decree



No. (M/86) dated 27/08/1438 AH , as amended, Implementing Regulations of the Law issued by the Decision of Board of Directors of General Authority of Zakat and Income (currently ZATCA) No. (2-3-19) dated 10/09/1440 AH , as amended, and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant laws, regulations and decisions.

In form, since the Plaintiff seeks through its claim to cancel the Defendant's decision regarding the imposition of excise tax for the sixth tax period of 2019 and its resulting fines, based on the Excise Tax Law and its Implementing Regulations, and given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Resolving Violations and Disputes of Excise Tax pursuant to Royal Decree No. (26040) dated 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the prescribed statutory period, the Department must accept the Case in terms of its form.

On merits, having carefully considered the case file and the requests, defenses, and arguments presented by both parties, and since the dispute centers on the Plaintiff's objection to the Defendant's decision regarding the imposition of excise tax for the sixth tax period of 2019 as well as its resulting fines, the Department has found the following:

First: Tax Differences Item: It is clear that the dispute lies in the final assessment notice for the disputed tax period, which resulted from the subjection of goods to excise tax. Article 2.1/d of the Implementing Regulations of the Excise Tax Law states: "1- Excise tax shall be imposed on the following goods: D. Sweetened Drinks" The Ministerial Committee defined sweetened drinks as: "Any product to which a source of sugar or other sweeteners is added, and which is produced for consumption as a beverage, whether ready-to-drink, concentrated, powder, gel, or any other form that can be converted into a beverage,". The Plaintiff's objection lies in the imposition of tax on the following items:

A) (Custard) Category: Upon examining the facts of the case, it becomes clear that the product in dispute is frozen custard, which is used in food production and not beverages. Additionally, the image attached by the Defendant (ZATCA) of the menu and its reliance on it as being used for various items such as beverages is incorrect. The Department found that it is one of the components of ice cream, thus falling outside the definition of sweetened drinks as defined by the Ministerial Committee, which leads the Department to cancel the Defendant's decision.

B) (Caramel Sauce) Category: Upon careful examination of the Case and its accompanying defenses, it becomes clear that the Plaintiff has attached an email from ZATCA, which clearly states its acceptance of caramel sauce as not subject to excise tax. Furthermore, as evident from the letter of (.....Company) that it is a type of additive and cannot, by itself, be transformed into a drink. This means that the product does not fit the classification of a sweetened drink, and therefore falls outside the definition of sweetened drinks as defined by the Ministerial Committee, leading the Department to cancel the Defendant's decision.

C) (Coconut Flakes) Category: Upon careful examination of the case file and its attachments, including the product image, it is evident that the product contains 0% sugar. Furthermore, the product's intended uses, as stated on its packaging (for preparing cakes, pastries, biscuits, etc.), clearly demonstrate that it cannot be classified as a sweetened drink. Consequently, the Department has decided to cancel the Defendant's decision.

D) (Singing Dog - Vanilla Flavor) Category: Upon considering the facts of the case, it becomes clear that the Plaintiff is objecting to being classified as subject to excise tax, pointing out ZATCA's acceptance of classifying the product (Singing Dog - Vanilla Flavor) as not subject to excise tax in different tax periods. In addition to attaching an email from ZATCA that clarifies its acceptance of the disputed product as not subject to excise tax. Additionally, it is evident from the letter submitted by the company (...) that the product does not contain sugar and is also used in food preparation, which leads the Department to cancel the Defendant's decision.



E) (Strawberry Sauce) Category: Upon careful consideration of the facts of the case, it becomes evident that the Plaintiff asserts that the product is used in baking cakes and other baked goods. Furthermore, the Plaintiff contends that the product is not subject to tax because it is a food product. Upon examining the letter from the manufacturing company of the strawberry sauce, it is clear that the company states that the product is used in food products such as cakes and others. Therefore, the product does not fall within the definition of sweetened drinks as defined by the Ministerial Committee, leading the Department to conclude that the Defendant's decision to classify strawberry sauce as subject to excise tax should be cancelled.

F) White Chocolate Mocha Flavored Drink: Definition of the tax base as stated in Article 1.1 of the Implementing Regulations of the Excise Tax Law states: "The value of excise good on which tax is imposed, equals to the retail sales price determined by the importer or producer, or the standard price agreed on these goods in accordance with the Agreement, whichever is higher; exclusive of the Tax due and VAT". And since upon examining the facts of the case and its attachments, it is clear that the Defendant (ZATCA) relied in its memorandum on its calculation of the tax base according to what the Plaintiff disclosed in the import declaration without providing any evidence to prove the existence of differences, and it has become clear to us from the Plaintiff's response that the standard prices were not clear and known to an extent that would enable it to determine the price of the tax base by comparing the standard price and the retail price, whichever is higher; in accordance with the definition of the tax base stated in Article 1.1 of the Implementing Regulations of the excise Tax Law: "The value of excise good on which tax is imposed, equals to the retail sales price determined by the importer or producer, or the standard price agreed on these goods in accordance with the Agreement, whichever is higher; exclusive of the Tax due and VAT" And since it has become clear to us that the Plaintiff paid the tax according to the prices assessed by customs, and was not informed about the standard prices, leading to the disclosure of the tax according to the customs data provided to it, as a result, the Department believes that the Defendant's decision should be cancelled.

Second: Late Payment Fine: It is clear that the Plaintiff's objection is to the imposition of a late payment fine resulting from the assessment of the tax period in dispute. And upon the Department's review of the entire case file and its contents, and given that the Department has ruled in the Plaintiff's favor in the first clause by canceling the Defendant's decision, and since the late payment fine arose from that decision, whatever is connected to it shall be governed by the same ruling. Therefore, the Department sees it fit to cancel the Defendant's decision.

Decision:

First: To Accept case in form.

Second: Cancel the Defendant's decision regarding tax differences for excise tax on goods.

Third: Cancel the Defendant's decision regarding late payment fine.

This decision was issued in presence of both parties. Department set thirty (30) days from date for receiving copy of decision, and may extend delivery date for another (30) days. Parties hereto may request to appeal decision within thirty (30) days from the day following the date specified for its receipt. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof. Date of uploading decision to General Secretariat electronic system shall be deemed the date of decision delivery.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).



Adjudication Committee

First Department to Adjudicate Excise Goods
Tax Violations and Disputes in Riyadh

Decision No. (ER-2022-230)

Delivered in Case No. (E-75106-2021)

Keywords:

Excise Tax - Tax Differences - Final Assessment Notice for the Tax Period - Mocha Chocolate Powder - White Mocha Chocolate Syrup - Late Payment Fine - Cancellation of the Defendant's Decision..

Abstract:

The Plaintiff is requesting the cancellation of the decision issued by ZATCA regarding Excise Tax. on the items included in the case for the sixth tax period of 2020, as well as the resulting fines. ZATCA responded that, regarding mocha chocolate powder, 1 liter white mocha chocolate syrup, and hot chocolate mix: We wish to inform the esteemed committee that ZATCA has conducted an inspection and audit of the Plaintiff's decisions related to the aforementioned tax period, and as a result, tax differences have been found that are due to ZATCA. It has been revealed that excise tax on these items was not remitted to ZATCA correctly. The assessment issued by ZATCA resulted in a recalculation of the excise tax, based on the Plaintiff's disclosure sent to ZATCA via email, in which the Plaintiff disclosed the prices due for the aforementioned items. ZATCA exercised its right to reassessment and the prices due. Regarding vanilla and caramel flavored syrup: ZATCA states that after conducting an inspection and assessment of these products, tax differences have resulted. The reason for this is that ZATCA has relied on the higher price between the retail selling price and the prices approved by it. Initially, ZATCA clarifies that the other products disputed by Plaintiff are as follows: Pineapple syrup, 36.1 liters, manufactured by Dole Foods, Lyons - Vanilla flavored syrup, 79.3 liters, Lyons - Magnus gallon - Marshmallow cream for topping, 36.1 kg - plastic bag, Dot Foods Inc. Co. Ltd., Coconut milk with pulp 360 ml. Co. Ltd., Apple juice syrup 81.1 kg - paper carton - ... Juice Company Chocolate flavored syrup, 63.3 kg - package - Lyons - Magnus - Chocolate flavor topping, 473 ml - gallon - Lyons - Magnus - Caramel flavored syrup, 2.1 liters, ... Company, plastic bottle - Lemon syrup 1 liter - paper carton - ... Root soda, glass bottle, Company 36.0 liters - Vanilla flavored syrup, 2.1 liters, ... Company, plastic bottle. As such, ZATCA states that after conducting an inspection and assessment of these products, tax differences have resulted. The reason for this is that ZATCA has relied on the higher price between the retail selling price and the prices approved by it. Second: Regarding the late payment fine: Due to findings of the inspection and assessment, a late payment fine has been imposed. The Department has established that regarding tax differences: It is clear that the dispute lies in the final assessment notice for the disputed tax period, which resulted from the subjection of goods to excise tax. Plaintiff's objection is specifically to the imposition of excise tax on the following item: A) Regarding Mocha Chocolate Powder, White Mocha Chocolate Syrup (1 liter), and Hot Chocolate Mix: Upon careful review of the case file and its supporting documents, the Department finds that the Defendant has failed to provide any evidence to support the claim that there are tax differences that Plaintiff has not disclosed. Furthermore, Defendant has not provided the basis upon which it made its decision. Consequently, the Defendant's decision to amend and reassess is not based on clear and specific objective



reasons, nor has Defendant provided any documents demonstrating that Plaintiff has failed to pay the correct amount of excise tax. B) Vanilla Flavored and Caramel Syrup: Upon careful examination of the case and its supporting documents, it is evident that the standard prices were not clear to Plaintiff, preventing it from accurately determining the tax base. This is because Plaintiff was unable to compare the standard price to the retail price to determine which was higher, as required by the definition of tax base. C) Other Products: Upon careful examination of the case and its supporting documents, it is evident that the standard prices were not clear or known to Plaintiff, preventing it from accurately determining the tax base. This is because Plaintiff was unable to compare the standard price to the retail price to determine which was higher, as required by the definition of tax base. Regarding the late payment fine: It is clear that the Plaintiff objected the imposition of a late payment fine resulting from the reassessment of the tax period in dispute. Upon the Department's review of the entire case file and its contents, and given that the Department has ruled in the Plaintiff's favor in the first clause by canceling the Defendant's decision, and since the late payment fine arose from that decision, whatever is connected to it shall be governed by the same ruling. Department ruled to Cancel the Defendant's decision regarding tax differences for excise tax on goods and late payment fine.

Documents:

- Article 6/2 of [the Common Excise Tax Agreement of GCC States, promulgated by Royal Decree No. M/51 dated 05/03/1438 AH.](#)
- Article (1/1) of [the Excise Tax Implementing Regulations issued by Decision No. \(2-3-19\) of the Board of Directors of the General Authority for Zakat and Income, dated 10/09/1440 AH.](#)

Facts:

All praise is due to Allah, prayers and peace be upon the last Prophet Mohammad, and be upon his relatives and all his companions; now therefore:

On Monday 19/12/2022, First Department to Adjudicate excise Goods Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH , as amended and Royal Order No. (13957) dated 26/02/1444 AH, held its session via video conferences as per the remote video litigation procedures to consider above-mentioned case. Since the case fulfilled the established regulatory requirements, it was filed with the General Secretariat of the Zakat, Tax and Customs Committees under the above number on 11/10/2021.

The facts of this case are summed up in that (International Trading Company), C.R. No. (...), has filed through, ID No. (...), in his capacity as the Plaintiff's Attorney, by POA No. (...), a statement of claim that included an objection to the Defendant's decision regarding the imposition of the Excise Goods Tax on the items subject matter of the case for the sixth tax periods of 2020, as well as the resulting fines, and requested the cancellation of the Defendant's decision.

Having presented statement of claims to Defendant, it responded as follows: First: Regarding Mocha Chocolate Powder, White Mocha Chocolate Syrup (1 liter), and Hot Chocolate Mix: We wish to inform the esteemed committee that ZATCA has conducted an inspection and audit of the Plaintiff's decisions related to the aforementioned tax period. As a result, it was found that there were tax differences due to ZATCA. It was revealed that excise tax on these items was not remitted to ZATCA correctly. The assessment issued by ZATCA resulted in a recalculation of the excise tax, based on the Plaintiff's disclosure sent to ZATCA via email, in which Plaintiff disclosed the prices due for the aforementioned items. ZATCA exercised its right to reassessment and the prices due pursuant to Article 6 of the Common Excise Tax



Agreement and Article 17 of Excise Tax Implementing Regulations. Regarding vanilla flavored and caramel flavored syrup: ZATCA states that after conducting an inspection and assessment of these products, tax differences have resulted. The reason for this is that ZATCA has relied on the higher price between the retail selling price and the prices approved by it, in accordance with Article 6 of the Common Excise Tax Agreement and Article 17 of Excise Tax Implementing Regulations. Initially, ZATCA clarifies that the other products disputed by Plaintiff are as follows: Pineapple syrup, 36.1 liters, manufactured by Dole Foods, Lyons - Vanilla flavored syrup, 79.3 liters, Lyons - Magnus gallon - Marshmallow cream for topping, 36.1 kg - plastic bag, Dot Foods Inc. Co. Ltd., Coconut milk with pulp 360 ml - Co. Ltd., Apple juice syrup 81.1 kg - paper carton - ... Juice Company Chocolate flavored syrup, 63.3 kg - package - Lyons - Magnus - Chocolate flavor topping, 473 ml - gallon - Lyons - Magnus - Caramel flavored syrup, 2.1 liters, ... Company, plastic bottle - Lemon syrup 1 liter - paper carton - Root soda, glass bottle, Company 36.0 liters - Vanilla flavored syrup, 2.1 liters, ... Company, plastic bottle. As such, ZATCA states that after conducting an inspection and assessment of these products, tax differences have resulted. The reason for this is that ZATCA has relied on the higher price between the retail selling price and the prices approved by it, in accordance with Article 6 of the Common Excise Tax Agreement and Article 17 of Excise Tax Implementing Regulations. Second: Regarding the late payment fine: Due to findings of the inspection and assessment, a late payment fine has been imposed, in accordance with Article (22) of the Excise Tax Law. Requests: ZATCA requests Honorable Committee to dismiss the case for grounds stated above and to uphold ZATCA decision. ZATCA also reserves the right to provide further responses and clarifications before pleadings closure.

On Sunday, 13/03/2021, The First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh convened a session remotely in accordance with the remote virtual litigation procedures; pursuant to the provisions of Article 15.2 of the Rules of Procedure for Committees for Resolution of Tax Violations and Disputes issued by Royal Decree No. (26040) and dated: 21/04/1441 AH, to consider the case filed by the Plaintiff against the Defendant. Upon calling the parties to the case, Mr., ID No...., attended in his capacity as Attorney by POA No. (.....), and (Saudi) attended in her capacity as the Defendant's Attorney, by Authorization Letter No. (...) dated 17/08/1442 AH issued by Deputy Governor for Legal Affairs. At the beginning of the session, the Plaintiff's Attorney and the Defendant's Attorney requested that the Case be postponed to a future session, as there were settlement efforts between the parties. Accordingly, the Department decided to postpone the continuation of the hearing of the Case to the session on 13/04/2022 at 9:00 AM, on the condition that the Representative of the Defendant submits her response to the Plaintiff's Attorney's memorandum, in the event that the parties do not reach a final settlement of the dispute, in accordance with the provisions of Article (21) of the Rules of Procedure for Committees for Resolving Tax Violations and Disputes

On Sunday, 21/08/2021, The First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh convened a session remotely in accordance with the remote virtual litigation procedures; pursuant to the provisions of Article 15.2 of the Rules of Procedure for Committees for Resolution of Tax Violations and Disputes issued by Royal Decree No. (26040) and dated: 21/04/1441 to consider the Case filed by the Plaintiff against the Defendant, and upon calling the parties to the Case, no one representing the Plaintiff was present despite being legally notified of the session date, and Mr. (Saudi), ID No.(...), in his capacity as the Defendant's Attorney, by Authorization Letter No. (...), Dated 17/08/1442 AH, issued by the Deputy Governor for Legal Affairs. Based on the information available in its file, the Department did not find that the Case is ready to be adjudicated. Accordingly, the Department unanimously decided to dismiss the Case, in accordance with the provisions of Article 20.2 of the Rules of Procedure for Committees for Resolving Tax Violations and Disputes.



On 06/09/2022, the Plaintiff submitted a request to reopen the Case.

On Monday, 19/12/2022, The First Department to Adjudicate excise Goods Tax Violations and Disputes in Riyadh held its session remotely in accordance with the remote virtual litigation procedures; pursuant to the provisions of Article 15.2 of the Rules of Procedure for Committees for Resolution of Tax Violations and Disputes issued by Royal Decree No. (26040) and dated: 21/04/1441 AH; to consider the Case filed by the Plaintiff against the Defendant. Upon Calling the parties to the Case, Mr. Saudi, ID No.was present in his capacity as The Plaintiff's Attorney by POA No (....), and Mr. in his capacity as the Defendant's Attorney, by Authorization Letter No. (...), On 17/08/1442 AH, issued by the Deputy Governor for Legal Affairs. After discussing the Case with both parties, the Department decided to adjourn the session for deliberation in preparation for issuing the decision.

Grounds:

Having reviewed Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/1/1425 AH , as amended, and its Implementing Regulations issued by Minister of Finance Decision No. (1535) of 11/06/1425 AH , as amended, Excise Tax Law promulgated by Royal Decree No. (M/86) dated 27/08/1438 AH , as amended, Implementing Regulations of the Law issued by the Decision of Board of Directors of General Authority of Zakat and Income (currently ZATCA) No. (2-3-19) dated 10/09/1440 AH , as amended, and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant laws, regulations and decisions.

In form, since the Plaintiff seeks through its claim to cancel the Defendant's decision regarding the imposition of excise tax on the items included in the case for the sixth tax period of 2020 and its resulting fines, based on the Excise Tax Law and its Implementing Regulations, and given that this dispute is a tax dispute, it falls within the jurisdiction of the Excise Tax Violations and Disputes Resolution Committee pursuant to Royal Decree No. (26040) dated 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the prescribed statutory period, the Department must accept the Case in terms of its form.

On merits, having carefully considered the case file and the requests, defenses, and arguments presented by both parties, and since the dispute centers on the Plaintiff's objection to the Defendant's decision regarding the imposition of excise tax on the items included in the case for the sixth tax period of 2020 as well as its resulting fines, the Department has found the following:

First: Tax Differences Item: It is clear that the dispute lies in the final assessment notice for the disputed tax period, which resulted from the subjection of goods to excise tax. Article 6.2 of the Common Excise Tax Agreement of GCC States set forth that: "The value on which the tax is imposed on other excisable goods shall be determined based on the retail selling price of these goods, provided that the retail selling price shall be the price determined by the importer or producer of the excisable goods, or according to the standard price list that shall be periodically agreed upon between the tax authorities in the GCC countries, whichever is higher". The Plaintiff's objection lies in the imposition excise tax on the following items:

A) Regarding Mocha Chocolate Powder, White Mocha Chocolate Syrup (1 liter), and Hot Chocolate Mix:

Upon careful review of the case file and its supporting documents, the Department finds that the Defendant has failed to provide any evidence to support the claim that there are tax differences that Plaintiff has not disclosed. Furthermore, Defendant has not provided the basis upon which it made its decision. Consequently, the Defendant's decision to amend and reassess is not based on clear and specific objective reasons, nor has Defendant provided any documents demonstrating that Plaintiff has failed to pay the correct amount of excise goods



in accordance with the provisions of Article (6) of the Common Excise Tax Agreement of GCC States, the Department therefore decides to cancel the Defendant's decision.

B) Vanilla Flavored and Caramel Syrup:

Upon careful examination of the case and its supporting documents, it is evident that the standard prices were not clear to Plaintiff, preventing it from accurately determining the tax base. This is because Plaintiff was unable to compare the standard price to the retail price to determine which was higher, as required by the definition of tax base in Article 1.1 of the Implementing Regulations of the Excise Tax Law. Therefore, the Department decides to Cancel the Defendant's decision.

C) Other Products:

Upon careful examination of the case and its supporting documents, it is evident that the standard prices were not clear or known to Plaintiff, preventing it from accurately determining the tax base. This is because Plaintiff was unable to compare the standard price to the retail price to determine which was higher, as required by the definition of tax base in Article 1.1 of the Implementing Regulations of the Excise Tax Law. Therefore, the Department decides to Cancel the Defendant's decision.

Second: Late payment fine: It is clear that the Plaintiff's objected the imposition of a late payment fine resulting from the assessment of the tax period in dispute. Upon the Department's review of the entire case file and its contents, and given that the Department has ruled in the Plaintiff's favor in the first clause by canceling the Defendant's decision, and since the late payment fine arose from that decision, whatever is connected thereto shall be governed by the same ruling. Therefore, the Department sees it fit to cancel the Defendant's decision.

Decision:

First: To Accept case in form.

Second: Cancel the Defendant's decision regarding tax differences for excise tax on goods.

Third: Cancel the Defendant's decision regarding late payment fine.

This decision was issued in presence of both parties. Department set thirty (30) days from date for receiving copy of decision, and may extend delivery date for another (30) days. Parties hereto may request to appeal decision within thirty (30) days from the day following the date specified for its receipt. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof. Date of uploading decision to General Secretariat electronic system shall be deemed the date of decision delivery.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.

The judgment has become final for expiration of the period prescribed for challenging it based on Article 33.2 of the Rules of Procedure for Zakat, Tax, and Customs Committees.

**Appeal Committee**

First Appeals Chamber for Tax Violations and Disputes, issued in Value Added and Excise Goods in Riyadh

Decision No. (VA-2022-567)
Appeal No. (E-82969-2021)

Keywords:

Appeal – Excise Goods Tax – Cancellation of tax differences for the validity of the tax return and the lack of clarity of the basis of the assessment - Standard prices - Determination of the price of the tax base- Lack of clarity of the basis on which the assessment is based - Disclosure of the tax in accordance with customs data - Excise tax differences - Acceptance of appeal and cancellation of the decision of Appeals Chamber and the decision of ZATCA.

Abstract:

Appellant demands cancellation of Appeals Chamber decision No. (ER-2021-36) regarding case filed by Appellant against Appellee, requiring judge to dismiss Plaintiff claim against Defendant, ZATCA, regarding the subject matter. Appellant demands cancellation of tax differences for validity of tax return and lack of clarity of the basis upon which the assessment of Appellee is based. The claim ended with the request of accepting appeal and canceling Committee decision. ZATCA responded that there are tax differences due to difference between prices declared by Appellant and standard prices specified by ZATCA. It is proved to Appeals Chamber that it is established that standard prices have not been declared to taxpayer given that they do not have access to them in order to be able to determine the price of the tax base. Given that Appellant has paid the tax as per the prices estimated by ZATCA and is not informed of the standard prices or no challenge has been raised before clearance regarding prices declared, the tax has been disclosed as per the custom specifications incoming to Appellant, which makes Chamber deems fit to accept appeal and cancel the decision of Appeals Chamber. Therefore, the following is decided: Accept appeal in form and on merits: Accept appeal with respect to the excise tax differences clause and the cancellation of the decision of Appeals Chamber and the cancellation of the decision of ZATCA.

Documents:

- Article (1/1) of [Implementing Regulations of Excise Tax Law issued under the decision of Board of Directors of General Authority of Zakat & Tax Board of Directors Resolution No. \(2-3-19\) dated 10/9/1440 AH.](#)
- Article (15/2) of [Tax Dispute and Violation Committee Procedures issued under Royal Decree No. \(26040\) dated 21/04/1441 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Saturday 07/02/1444 AH, corresponding to 03/09/2022 AD, First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods, formed under Royal Decree No. (65474) dated 23/12/1439 AH, in accordance with Article 67.5 of Income Tax Law, promulgated under Royal Decree No. (M/1) dated 15/1/1425 AH, as amended under Royal



Decree No. (M/113) dated 2/11/1438 AH, met at its headquarters in Riyadh, to consider appeal submitted on 19/11/2021 AD, by ... Holder of National Identity No (...) Being owner of ... Trading, with C.R. No. (...) Regarding decision of First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods in Riyadh No. (36-2021-ER) in the case filed by Appellant against Appellee.

Since facts of this case have been stated in the decision subject matter of appeal, Appeals Chamber refers to this decision for avoidance of repetition. Whereas decision of Resolution Chamber ruled the following:

First: In form:

- To Accept case in form.

Second: On merits:

- Dismiss Plaintiff claim\ Holder of National Identity No (...) Being owner of ... Trading, registered under C.R. No. (...), against Defendant, ZATCA on the subject matter.

Since decision was not accepted by Appellant, it submitted to Appeals Chamber an appeal statement that included its objection to decision of Tax Dispute and Violations Committee subject of appeal, which ruled that its case was not accepted on merits. Appellant demands cancellation of tax differences, due to validity of tax return and lack of clarity of assessment basis. Statement concluded with a request to accept appeal and cancel Committee decision.

In response to Appellant statement, Appellee submitted a counter-argument, summarized as follows: "There are tax differences resulting from difference between prices declared by Appellant and standard prices specified by ZATCA."

On Saturday 07/02/1444 AH, corresponding to 03/09/2022 AD, First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods held a session to consider appeal submitted via video conference, based on Article 15.2 of Tax Dispute and Violation Committee Procedures, which stipulates that: "Chamber sessions may be held by means of modern technology provided by General Secretariat." Case file, including all memoranda and documents, and decision of Appeals Chamber subject of appeal have been reviewed. After discussion and deliberation, Chamber decided to adjourn session to issue decision.

Grounds:

Based on Income Tax Law, issued under Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) dated 2/11/1438 AH, and after reviewing Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

Whereas, appeal was submitted by a person of capacity during the specified regulatory period and fulfilled its statutory requirements in accordance with the provisions of Article 40.2 of Tax Dispute and Violation Committee Procedures, which necessitates the acceptance of appeal in form.

On **merits**, after reviewing the case files and examining documents contained therein, and after reviewing the submissions and responses submitted by the two parties, Appeals Chamber found that decision issued by Appeals Chamber ruled to dismiss Appellant case regarding final evaluation notice for the periods related to the years (2018 AD - 2019 AD), and since Appellant objects to the decision of Appeals Chamber and demands the cancellation of the tax differences for the validity of the tax return and the lack of clarity of the basis on which the assessment of Appellee is based, and since Appellee relied in its action on Appellant acknowledgment of the retail sale price without regard to the standard price specified by it, which resulted in the payment of a less excise tax than calculated, and since it is established that the standard prices are not announced to taxpayer, as they cannot access the standard prices in order to be able to determine the price of the tax base by determining the higher of the standard price and the retail price as per the definition of tax base contained in Article 1.1 of Implementing Regulations of Excise Tax Law regarding: "Value of Excise Good on which



Tax is imposed, equals to retail sale price determined by importer or producer, or standard price agreed on in accordance with Agreement, whichever is higher, exclusive of Tax due and VAT". Since Appellant has paid tax according to prices estimated by ZATCA and was not informed of the standard prices or submitted a challenge before clearance about prices declared to them, leading to disclosure of tax according to customs specifications received by it, Chamber accepted appeal and canceled decision thereof.

Therefore, and after due deliberation, Chamber unanimously decided the following:

Decision:

First: Accept the Appeal of /... Holder of National Identity No (...) In their capacity as owner of ... Trading, with C.R. No. (...) In form be submitted during regulatory period.

Second: Accept the Appeal of /... Holder of National Identity No (...) In their capacity as owner of ... Trading, with C.R. No. (...) With regard to clause of excise tax differences, and cancel decision of First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods in Riyadh No. (36-2021-ER), and cancel the decision of ZATCA.

May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.



Decision No. (VA-2022-568)

First Appeals Chamber for Tax Violations and Disputes, issued in Value Added and Excise Goods in Riyadh

Appeal No. (E-89414-2021)

Keywords:

Appeal – Excise Goods Tax – Non-production or import of excise taxable goods - Description of the product subject of the dispute as a frozen fruit-flavored dessert - Late payment fine - Good is intended to be consumed as food, not a beverage - Accept appeal and cancel Appeals Chamber decision.

Abstract:

Appellant demands cancellation of decision made by Disputes and Violations Chamber in case No. (74-2021-ER) filed by Appellant against Appellee, ruling to dismiss Plaintiff case based on the fact that it does not produce or import goods subject to excise tax. Statement was concluded with a request to accept appeal and cancel Committee decision. Appeals Chamber verified that Appellant submitted a report issued by SFDA, including description of product under dispute, such as a frozen fruit-flavored dessert, and since the customs specification No. (...) described product as edible ice cream, and where Appeals Chamber proved the accuracy of the description contained in the customs specification in accordance with what is stated in the tariff file approved on the website of ZATCA, and since The good is intended to be consumed as food, not a beverage, and since Appellee did not challenge the documents submitted, Chamber accepted appeal and cancelled the decision of Appeals Chamber. Since the fine resulted from this, what is associated with it shall be subject to the same ruling. Department ruled to Accept appeal and cancel the decision of Appeals Chamber on the fine.

Documents:

- Article (15/2) of [Tax Dispute and Violation Committee Procedures issued under Royal Decree No. \(26040\) dated 21/04/1441 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday 02/02/1444 AH, corresponding to 29/08/2022 AD, First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods, formed under Royal Decree No. (65474) dated 23/12/1439 AH, in accordance with Article 67.5 of Income Tax Law, promulgated under Royal Decree No. (M/1) dated 15/1/1425 AH, as amended under Royal Decree No. (M/113) dated 2/11/1438 AH, met at its headquarters in Riyadh, to consider appeal submitted on 29/12/2021 AD, by... Holder of National Identity No (...) Acting on behalf of Appellant under Power of Attorney No. (...) Regarding decision of First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods in Riyadh No. (74-2021-ER) in the case filed by Appellant against Appellee.



Since facts of this case have been stated in the decision subject matter of appeal, Appeals Chamber refers to this decision for avoidance of repetition. Whereas decision of Resolution Chamber ruled the following:

First: In form:

- To Accept case in form.

Second: On merits:

- Dismiss claim of Plaintiff\ ... Company registered under C.R. No. (...), against Defendant, ZATCA on the decision subject of the case.

Since this decision was not accepted by Appellant, it submitted to Appeals Chamber a statement of appeal that included its objection to the decision of Appeals Chamber subject to appeal, which ruled that its case was not accepted on merits, where Appellant demands to cancel the decision of the Disputes and Violations Chamber regarding the imposition of an excise tax (sweetened beverages) in an amount of SAR (1,055,727.89) for the fifth and sixth periods of 2020, because it does not produce or import goods subject to the excise tax. The statement was concluded with a request to accept appeal and cancel the decision of the Committee.

On Monday 02/02/1444 AH, corresponding to 29/08/2022 AD, First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goodsheld a session to consider appeal submitted via video conference, based on Article 15.2 of Tax Dispute and Violation Committee Procedures, which stipulates that: "Chamber sessions may be held by means of modern technology provided by General Secretariat." Case file, including all memoranda and documents, and decision of Appeals Chamber subject of appeal have been reviewed. After discussion and deliberation, Chamber decided to adjourn session to issue decision.

Grounds:

Based on Income Tax Law, issued under Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) dated 2/11/1438 AH, and after reviewing Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

Whereas, appeal was submitted by a person of capacity during the specified regulatory period and fulfilled its statutory requirements in accordance with the provisions of Article 40.2 of Tax Dispute and Violation Committee Procedures, which necessitates the acceptance of appeal in form.

On merits, after reviewing case files and examining all relevant documents, submissions and responses submitted by two parties, Appeals Chamber found that decision issued by Appeals Chamber ruled to dismiss Appellant case regarding final evaluation notice for the tax periods (5-6) of 2020 and to impose a late payment fine, and with regard to the item of the imposition the excise tax, and since Appellant objects to the decision of Appeals Chamber because the nature of Company's activity is the manufacture of ice cream and that the good subject of the dispute is an ice cream that does not meet the specifications of selective goods in general and sweetened drinks in particular, and since Appellee subjected it to excise tax based on the customs clause and customs tariff, and since it is proven that the product "Dandormah– Ice Pop" with the logo (...) In the category of kids ice cream and Company industrial activity is the manufacture of ice cream according to the license issued by the Ministry of Industry and Mineral Resources, and since Appellant submitted a report issued by the Saudi Food and Drug Authority where the description of the product in dispute is specified as a frozen fruit-flavored dessert, and since the customs declaration No. (...) described the product as edible ice cream, and where Appeals Chamber found that the description contained in the customs specification is accurate in accordance with what is stated in the tariff file approved on the website of ZATCA, and since the definition of sweetened goods contained in the decision of the



Ministerial Committee is: “Any product that is produced for consumption as a beverage or in the form of concentrates, powders, gels, extracts or any form that can be converted into a beverage”, and since the good is intended to be consumed as food, not a beverage, and Appellee did not challenge the documents submitted, Chamber accepted appeal and canceled Appeals Chamber decision.

With regard to the late payment fine and Appellant request to cancel that fine that resulted from the final evaluation notice for the tax period in question, and since the above clause led to the cancellation of Appeals Chamber’s decision subject of the Appeal, and since the fine resulted from this, what is associated with it shall be subject to the same ruling, Appeals Chamber accepted appeal and canceled Appeals Chamber decision on the fine subject of the Appeal. Therefore and after deliberation, Chamber unanimously decided the following:

Decision:

First: Accept the Appeal of /... Company with the Commercial Registration number (.....), In form be submitted during regulatory period.

Second: Accept the Appeal of /... Company with the Commercial Registration number (.....), With regard to the imposition of excise tax, and the cancellation of the decision of First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods in Riyadh No. (74-2021-ER), as well as the cancellation of the decision of ZATCA.

Third: Accept the Appeal of /... Company with the Commercial Registration number (.....), With regard to the late payment fine, and the cancellation of the decision of First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods in Riyadh No. (74-2021-ER), as well as the cancellation of the decision of ZATCA.

May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.



Appeal Committee
First Appeals Chamber for Tax Violations and
Disputes Value Added and Excise Goods issued
in Value Added and Excise Goods in Riyadh

Decision No. (VA-2022-607)
Appeal No. (E-84143-2021)

Keywords:

Appeal – Excise Goods Tax - Cancellation of tax differences for failure to notify Appellant of the correct prices - Standard price - Indicative price list - ZATCA approved prices - Determination of profit margin according to cost - Correction of prices during the clearance - Rejection of appeal and cancellation of the decision of Appeals Chamber.

Abstract:

Appellant demands the cancellation of Appeals Chamber decision No. (60-2021-ER) in the case filed by Appellant against Appellee, and requires the judge to dismiss the claim; therefore, Appellant demands the cancellation of tax differences for not be informed of the correct price required from it during that period. The request ended with demanding the acceptance of the Appeal and the cancellation of the Committee's decision - Appeals Chamber found that Appellee has modified the due amount of tax. Given that Appellee relied in its action on the fact that Appellant acknowledged the retail price with no regard to the standard price specified by it, which resulted in the payment of a less excise tax than calculated, given that Appellee did not submit the indicative price list and the prices approved by ZATCA to prove the presence of tax differences, given that the approval of prices results in the determination of profit margin according to cost and therefore the final sale, and given that Appeals Chamber does not have an evidence that Appellant has been informed of the correction of prices during clearance and before final sale, this action involves the charge of additional costs on the seller that cannot be recovered by consumers in order for the seller to complete the final sale - This means: The acceptance of appeal with respect to the tax differences clause, the cancellation of the decision of Appeals Chamber and the cancellation of the decision of ZATCA.

Documents:

- Article (8) of Implementing Regulations of the [Value Added Tax Law issued by ZATCA's Board of Directors No. \(3839\) dated 14/12/1438 AH.](#)
- Article (15/2) of [Tax Dispute and Violation Committee Procedures issued under Royal Decree No. \(26040\) dated 21/04/1441 AH.](#)

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Tuesday 25/01/1444 AH, corresponding to 23/08/2022 AD, First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods, formed under Royal Decree No. (65474) dated 23/12/1439 AH, in accordance with Article 67.5 of Income Tax Law, promulgated under Royal Decree No. (M/1) dated 15/1/1425 AH, as amended under Royal Decree No. (M/113) dated 2/11/1438 AH, met at its headquarters in Riyadh, to consider appeal submitted on 28/11/2021 AD, by ... Holder of National Identity No (...) As the owner



of ... Trading Corporation, registered under C.R. No. (...) On the decision of First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods in Riyadh No. (36-2021-ER) in the case filed by Appellant against Appellee.

Since facts of this case have been stated in the decision subject matter of appeal, Appeals Chamber refers to this decision for avoidance of repetition. Whereas decision of Resolution Chamber ruled the following:

First: In form:

- To Accept case in form.

Second: On merits:

- Dismiss the claim of Plaintiff.

Since this decision was not accepted by Appellant, it submitted to Appeals Chamber an appeal statement that included its objection to the decision of Tax Dispute and Violations Committee subject of appeal, which ruled that its case was not accepted on merits, where Appellant demands the cancellation of the tax differences for failure of informing it of the correct prices and demanding them during the period. The statement was concluded with a request to accept appeal and cancel the Committee's decision.

In response to Appellant statement, Appellee submitted a counter-argument, summarized as follows: "There are tax differences resulting from the difference between the prices declared by Appellant and the standard prices specified by ZATCA."

On Tuesday 25/01/1444 AH, corresponding to 23/08/2022 AD, First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods held a session to consider appeal submitted via video conference, based on Article 15.2 of Tax Dispute and Violation Committee Procedures, which stipulates that: "Chamber sessions may be held by means of modern technology provided by General Secretariat." Case file, including all memoranda and documents, and decision of Appeals Chamber subject of appeal have been reviewed. After discussion and deliberation, Chamber decided to adjourn session to issue decision.

Grounds:

Based on Income Tax Law, issued under Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) dated 2/11/1438 AH, and after reviewing Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

Whereas, appeal was submitted by a person of capacity during the specified regulatory period and fulfilled its statutory requirements in accordance with the provisions of Article 40.2 of Tax Dispute and Violation Committee Procedures, which necessitates the acceptance of appeal in form.

On merits, after reviewing the case files and examining the documents contained in them, and after reviewing the submissions and responses submitted by the two parties, Appeals Chamber found that the decision issued by Appeals Chamber ruled to dismiss Appellant case regarding the final evaluation notice for the second tax period beginning from 2019 AD, and since Appellant objects to the decision of Appeals Chamber and demands the cancellation of the tax differences for not being informed of the correct prices and demanding them within a short period before the final sale is completed. In addition, the mistake is attributed to ZATCA as the standard prices must be available to it as the due tax collector, and given that it is established that the total tax due as per Appellant's approved customs specification is an amount of SAR (1,517,629.50), and that Appellee has modified the due tax amount as per the indicative prices to be SAR (3,430,549.92) with tax differences of SAR (1,912,920.42), and since Appellee relied in its action on Appellant acknowledgment of the retail sale price with no regard to the standard price specified by it, which resulted in the payment of a less excise tax than calculated, since Appellee reliance on Article 8 of Implementing Regulations of the



Law demonstrates that the purpose of the provision is Appellee right to reject and correct the retail prices during document submission, not after clearance without informing taxpayer of the doubt about the retail price, and since the price approval necessitates the determination of profit margin according to cost during clearance and before final sale, this action involves the charge of additional costs on the seller that cannot be recovered by consumers in order for the seller to complete the final sale, which made Chamber consider the acceptance of the Appeal and the cancellation of Appeals Chamber.

Therefore, and after due deliberation, Chamber unanimously decided the following:

Decision:

First: Accept the Appeal of /... Holder of National Identity No (...) In form be submitted during regulatory period.

Second: Accept the Appeal of /... Holder of National Identity No (...) With regard to the clause of tax differences, and cancel the decision of First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods in Riyadh No. (60-2021-ER), and cancel the decision of ZATCA.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Decision No. (VA-2022-608)

First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods issued in Value Added and Excise Goods in Riyadh

Appeal No. (E-84526-2021)

Keywords:

Appeal - Excise Tax - Field Inspection - Existence of Excise Goods Such as Sweetened Beverages Subject to Excise Tax - Inaccuracy of Product Description Certificate Submitted by Manufacturer - Certificate from an Accredited Laboratory - Late Payment Fine- Error in Declaration.

Abstract:

Appellant demands the consideration of the decision of First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods in Riyadh No. (46-2021-ER) on the case filed by Appellee against Appellant, ZATCA, and requires the judge to cancel the decision of Defendant (ZATCA) against Plaintiff \ ... a one-person Company, with C.R. No. (...). Given that Appellant objects to Appeals Chamber decision to accept Appellee case and cancel its decisions, and with regard to imposition of excise goods tax, Appellant claims to cancel Appeals Chamber decision on the pretext of inaccuracy of product description certificate prepared by manufacturer, in addition to absence of a stamp on certificate issued by it. Since Appellee did not provide a certificate from an accredited laboratory stating that product in question is free of sugars to prove validity of her claim, and given that product description certificate issued by manufacturer (... Company) is not considered reliable evidence, because it is not issued by an entity approved by SFDA. Regarding Appellant request to cancel fines for mis acknowledgement and late payment resulting from final evaluation notice for tax period in question; since the above clause led to cancellation of Appeals Chamber decision subject of Appeal; and since fines resulted from this, any related matter shall have the same ruling and effect. Department ruled to Accept appeal in form and on merits and cancel the decision of Appeals Chamber regarding the imposition of the excise tax, and regarding the mis acknowledgement and late payment fines.

Documents:

- Article (2/60) of the [Implementing Regulations of Excise Tax Law issued under the decision of Board of Directors of General Authority of Zakat & Tax Board of Directors Resolution No. \(2-3-19\) dated 10/9/1440 AH.](#)
- Article (15/2) of [Tax Dispute and Violation Committee Procedures issued under Royal Decree No. \(26040\) dated 21/04/1441 AH.](#)

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Tuesday 25/01/1444 AH, corresponding to 23/08/2022 AD, First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods, formed under Royal Decree No. (65474) dated 23/12/1439 AH, in accordance with Paragraph (b) of Article 67 of Income



Tax Law, promulgated under Royal Decree No. (M/1) dated 15/1/1425 AH, as amended under Royal Decree No. (M/113) dated 2/11/1438 AH, met at its headquarters in Riyadh, to consider appeal submitted on 30/11/2021 AD, by Appellant\ ZATCA on the decision of First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods in Riyadh No. (60-2021-ER) in the case filed by Appellee against Appellant, ZATCA.

Since facts of this case have been stated in the decision subject matter of appeal, Appeals Chamber refers to this decision for avoidance of repetition. Whereas decision of Resolution Chamber ruled the following:

First: In form:

- To Accept case in form.

Second: On merits:

- Cancel the decisions of Defendant ZATCA against Plaintiff/ ... Company a one-person Company, with C.R. No. (...). Subject of the case.

Since this decision was not accepted by Appellant, it submitted to Appeals Chamber an appeal statement that included its objection to Committee decision to accept Appellee case and to cancel its decisions, as it objects to the decision of Appeals Chamber because the field inspection resulted in the presence of selective goods that serve as sweetened drinks subject to the excise tax. The statement was concluded with a request to accept appeal and cancel the decision of the Tax Disputes and Violations Committee.

On Tuesday 25/01/1444 AH, corresponding to 23/08/2022 AD, First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goodsheld a session to consider appeal submitted via video conference, based on Article 15.2 of Tax Dispute and Violation Committee Procedures, which stipulates that: "The sessions of Chambers may be held via modern technological means provided by General Secretariat." The case file, all memoranda and documents, and the decision of Appeals Chamber subject of appeal have been reviewed. After discussion and deliberation, Chamber decided to adjourn the session and issue the decision.

Grounds:

Based on Income Tax Law, issued under Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) dated 2/11/1438 AH, and after reviewing Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

Whereas, appeal was submitted by a person of capacity during the specified regulatory period and fulfilled its statutory requirements in accordance with the provisions of Article 40.2 of Tax Dispute and Violation Committee Procedures, which necessitates the acceptance of appeal in form.

On merits, by reviewing the case files and examining the documents they contained, and after reviewing the memoranda and responses submitted by the two parties, Appeals Chamber found that the decision issued by Appeals Chamber ruled to accept the case filed by Plaintiff/ ... Company a single shareholder Company Limited against ZATCA, and given that Appellant objects to the decision of Appeals Chamber to accept Appellee case and cancel its decisions, and with regard to the imposition of the excise goods tax, given that Appellant claims to cancel the decision of Appeals Chamber on the pretext of the inaccuracy of the product description certificate prepared by the manufacturer, in addition to the absence of a stamp on the certificate issued by it, given that it is established according to the statement of the Saudi Food and Drug Authority that the results of the laboratory analysis can be relied upon in the event that the laboratory adopts ISO 17025 specifications, given that Appellee did not provide a certificate from an accredited laboratory stating that the product in question is free of sugars to prove the validity of her claim, and given that the product description certificate issued by



the manufacturer (... Company) is not considered a reliable evidence because it is not issued by an entity approved by the Saudi Food and Drug Authority, and since the tax base exceeded SAR (60,000), it is a must to calculate an excise tax on sweetened drinks in accordance with the provisions of Article (60/2) of Implementing Regulations of Excise Tax Law, which makes Appeals Chamber accept appeal and cancel the decision of Appeals Chamber.

With regard to the mis acknowledgement and late payment fines and Appellant request to cancel that fine that resulted from the final evaluation notice for the tax period in question, and since the above clause led to the cancellation of Appeals Chamber's decision subject of the Appeal, and since the fines resulted from this, what is associated with it shall be subject to the same ruling, Appeals Chamber accepted appeal and cancelled Appeals Chamber's decision on the fines subject of the Appeal.

Therefore, and after due deliberation, Chamber unanimously decided the following:

Decision:

First: Accept appeal of/ ZATCA in form to be submitted within the period specified by law.

Second: Accept appeal of/ ZATCA With regard to the imposition of excise tax, and the cancellation of the decision of First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods in Riyadh No. (60-2021-ER).

Third: Accept appeal of Zakat, Tax and Customs Authority regarding the mis acknowledgement and late payment fines, and canceling the decision issued by First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods in Riyadh No. (60-2021-ER).

May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.



Appeal Committee
First Appeals Chamber for Tax Violations and
Disputes Value Added and Excise Goods
issued in Value Added and Excise Goods in
Riyadh

Decision No. (VA-2022-609)
Appeal No. (E-84960-2021)

Keywords:

Appeal – excise goods tax - late payment fine - customs clearance - undeclared standard prices for taxpayer - determining the price of the tax base - comparing the standard price and the retail price - disclosing the tax according to customs specifications - accept appeal and cancel the decision of Appeals Chamber and the decision ZATCA.

Abstract:

Appellant demands the cancellation of Appeals Chamber decision No. (54-2021-ER) in the case filed by Appellant against Appellee, and requires the judge to dismiss Plaintiff case/ ... Holder of National Identity No (...) Being owner of ... Trading, registered under the C.R. No. (...), against Defendant, ZATCA in the subject, where Appellant demands the cancellation of the tax differences for the payment of excise goods tax, value added tax and customs duties on the goods in dispute during the customs clearance. The claim was concluded with a request to accept appeal and cancel the Committee's decision – it was proven to Appeals Chamber that the standard prices are not announced to taxpayer, as he cannot access the standard prices in order to be able to determine the price of the tax base; by comparing the standard price and the retail price, whichever is higher, according to the definition of the tax base, and since Appellant paid the tax according to the prices estimated by ZATCA and was not informed of the standard prices or submitted a challenge about the prices approved before clearance, which led to the disclosure of the tax according to the customs specifications received by it, Chamber considers fit to accept appeal and cancel the decision of Appeals Chamber. Department ruled to Accept appeal with respect to the excise tax differences clause and the cancellation of both the decision of Appeals Chamber and the decision of ZATCA.

Documents:

- Article (1/1) of the [Implementing Regulations of Excise Tax Law issued under the decision of Board of Directors of General Authority of Zakat & Tax Board of Directors Resolution No. \(2-3-19\) dated 10/9/1440 AH](https://ncar.gov.sa/document-details/eyJpdjI6IkhReS8rcjVraHAxaGR0dTNWaE5rZWc9PSIsInZhbHVlIjoiOEhLcklTQlFCZisvMHltTkdFaFMwUT09IiwibWFjIjoiMmViOWY4NWRIZTY0YzIwMDRmMTc5OGI5MmU5N2VIYzlkYmIxN2ZhNGRINzZlMzU0ZThiOTAxOWM3ZTIyNWFiZSIsInRhZyI6IiJ9)<https://ncar.gov.sa/document-details/eyJpdjI6IkhReS8rcjVraHAxaGR0dTNWaE5rZWc9PSIsInZhbHVlIjoiOEhLcklTQlFCZisvMHltTkdFaFMwUT09IiwibWFjIjoiMmViOWY4NWRIZTY0YzIwMDRmMTc5OGI5MmU5N2VIYzlkYmIxN2ZhNGRINzZlMzU0ZThiOTAxOWM3ZTIyNWFiZSIsInRhZyI6IiJ9>
- Article (15/2) of [Tax Dispute and Violation Committee Procedures issued under Royal Decree No. \(26040\) dated 21/04/1441 AH.](#)

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions. ◇



On Tuesday 25/01/1444 AH, corresponding to 23/08/2022 AD, First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods, formed under Royal Decree No. (65474) dated 23/12/1439 AH, in accordance with Article 67.5 of Income Tax Law, promulgated under Royal Decree No. (M/1) dated 15/1/1425 AH, as amended under Royal Decree No. (M/113) dated 2/11/1438 AH, met at its headquarters in Riyadh, to consider appeal submitted on 04/12/2021 AD, by... Holder of National Identity No (...) Being owner of ... Trading, with C.R. No. (...) Regarding decision of First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods in Riyadh No. (54-2021-ER) in the case filed by Appellant against Appellee.

Since facts of this case have been stated in the decision subject matter of appeal, Appeals Chamber refers to this decision for avoidance of repetition. Whereas decision of Resolution Chamber ruled the following:

First: In form:

- To Accept case in form.

Second: On merits:

- Dismiss Plaintiff claim\ ... Holder of National Identity No (...) Being owner of ... Trading, registered under C.R. No. (...), against Defendant, ZATCA on the subject matter.

Since this decision was not accepted by Appellant, it submitted to Appeals Chamber an appeal statement that included its objection to Tax Dispute and Violations Committee's decision subject of appeal, which ruled that its case was not accepted on merits, given that Appellant demands the cancellation of the tax differences for its payment of the excise goods tax, value added tax and customs duties on the goods subject of conflict during the customs clearance. The statement was concluded with a request to accept appeal and cancel the Committee's decision.

In response to Appellant statement, Appellee submitted a counter-argument, summarized as follows: "There are differences that were not paid upon redemption due to differences between the prices approved upon customs release of imported items and the standard prices that are determined by Appellee."

On Tuesday 25/01/1444 AH, corresponding to 23/08/2022 AD, First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goodsheld a session to consider appeal submitted via video conference, based on Article 15.2 of Tax Dispute and Violation Committee Procedures, which stipulates that: "Chamber sessions may be held by means of modern technology provided by General Secretariat." Case file, including all memoranda and documents, and decision of Appeals Chamber subject of appeal have been reviewed. After discussion and deliberation, Chamber decided to adjourn session to issue decision.

Grounds:

Based on Income Tax Law, issued under Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) dated 2/11/1438 AH, and after reviewing Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

Whereas, appeal was submitted by a person of capacity during the specified regulatory period and fulfilled its regulatory requirements in accordance with the provisions of Article 40.2 of Tax Dispute and Violation Committee Procedures, which necessitates the acceptance of appeal in form.

On **merits**, after reviewing the case files and examining the documents contained in them, and after reviewing the submissions and responses submitted by the two parties, Appeals Chamber found that the decision issued by Appeals Chamber ruled to dismiss Appellant case regarding the final evaluation notice for (6-7) tax periods of 2018 AD and (1-2-3-5) tax period of 2019, and since Appellant objects to the decision of Appeals Chamber and demands the cancellation



of the tax differences for its payment of the excise goods tax, value added tax and customs duties on the goods subject of conflict during the customs clearance, and since it is established that the standard prices are not announced to taxpayer as they cannot access the standard prices in order to be able to determine the price of the tax base by determining the higher of the standard price and the retail price as per the definition of tax base contained in Article 1.1 of Implementing Regulations of Excise Tax Law regarding: "Value of Excise Good on which Tax is imposed, equals to the retail sale price determined by the importer or producer, or the standard price agreed on those goods in accordance with the Agreement, whichever is higher, exclusive of the Tax due and VAT", and since Appellant has paid the tax according to the prices estimated by ZATCA and was not informed of the standard prices or submitted a challenge before clearance about the prices declared to them, which led to the disclosure of the tax according to the customs specifications received by it, Chamber accepted appeal and canceled the decision of Appeals Chamber.

Therefore, and after due deliberation, Chamber unanimously decided the following:

Decision:

First: Accept the Appeal of /... Holder of National Identity No (...) In their capacity as owner of ... Trading, with C.R. No. (...) In form be submitted during regulatory period.

Second: Accept the Appeal of /... Holder of National Identity No (...) In their capacity as owner of ... Trading, with C.R. No. (...) With regard to clause of excise tax differences, and cancel decision of First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods in Riyadh No. (54-2021-ER), and cancel the decision of ZATCA.

May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.



Appeal Committee
First Appeals Chamber for Tax Violations and
Disputes Value Added and Excise Goods
issued in Value Added and Excise Goods in
Riyadh

Decision No. (VA-2022-636)
Appeal No. (E-112656-2022)

Keywords:

Appeal - Excise Goods Tax - Tax differences resulting from entering quantities into customs that conflict with the approved unit of measurement - Accept appeal in form and reject it on merits.

Abstract:

Appellant demands consideration of decision of First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods in Riyadh No. (19-2022-ER) on the case filed by Appellee against Appellant, ZATCA, and requires the judge to cancel the decision of Defendant (ZATCA) against Plaintiff \ ... the owner of ... Trading Corporation, registered under C.R. No. (...) subject of the case; as Appellant objects to Appeals Chamber decision, because tax differences resulted from entering quantities into customs that conflict with approved unit of measurement, and concluded with a request to accept appeal and cancel Appeals Chamber decision - Appeals Chamber found that decision matches provision of Law and the admissible grounds upon which it is based and which are sufficient to attribute its judgment to, as Chamber issuing the decision examined the source of the conflict with respect thereto and ended with the conclusion it reached in its verdict. Since Appeals Chamber did not notice grounds for remediation or comment in light of the defenses submitted before such Chamber with regard to the decision, Chamber acknowledges that such defenses shall not affect the decision's outcome. Department ruled to Appeal is rejected on merits and Appeals Chamber decision is supported.

Documents:

- Article (15/2) of [Tax Dispute and Violation Committee Procedures issued under Royal Decree No. \(26040\) dated 21/04/1441 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday 16/02/1444 AH, corresponding to 12/09/2022 AD, First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods, formed under Royal Decree No. (65474) dated 23/12/1439 AH, in accordance with Paragraph (b) of Article 67 of Income Tax Law, promulgated under Royal Decree No. (M/1) dated 15/1/1425 AH, as amended under Royal Decree No. (M/113) dated 2/11/1438 AH, met at its headquarters in Riyadh, to consider appeal submitted on 28/11/2022 AD, by Appellant\ ZATCA on the decision of First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods in Riyadh No. (19-2021-ER) in the case filed by Appellee against Appellant, ZATCA.



Since facts of this case have been stated in the decision subject matter of appeal, Appeals Chamber refers to this decision for avoidance of repetition. Whereas decision of Resolution Chamber ruled the following:

First: In form:

- To Accept case in form.

Second: On merits:

- Cancel the decision of Defendant ZATCA against Plaintiff/ ... the owner of ... Trading Corporation, registered under C.R. No. (...) Subject of the case.

Since this decision was not accepted by Appellant, it submitted to Appeals Chamber a statement of appeal that included its objection to the decision of the Committee to accept Appellee case is accepted and cancel its decision regarding the modification of selective goods for the second and third periods of 2018 AD and for the second, third, fourth, and sixth periods of 2019 AD, as Appellant objects to Appeals Chamber decision because the tax differences resulted from entering quantities into customs that conflict with the approved unit of measurement. The statement was concluded with a request to accept appeal and cancel Appeals Chamber decision.

On Monday 16/02/1443 AH, corresponding to 12/09/2022 AD, First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goodsheld a session to consider appeal submitted via video conference, based on Article 15.2 of Tax Dispute and Violation Committee Procedures, which stipulates that: "The sessions of Chambers may be held via modern technological means provided by General Secretariat." The case file, all memoranda and documents, and the decision of Appeals Chamber subject of appeal have been reviewed. After discussion and deliberation, Chamber decided to adjourn the session and issue the decision.

Grounds:

Based on Income Tax Law, issued under Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) dated 2/11/1438 AH, and after reviewing Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

Whereas, appeal was submitted by a person of capacity during the specified regulatory period and fulfilled its statutory requirements in accordance with the provisions of Article 40.2 of Tax Dispute and Violation Committee Procedures, which necessitates the acceptance of appeal in form.

On merits, by reviewing the case files and examining the documents they contained, and after reviewing the memoranda and responses submitted by the two parties, Appeals Chamber found that the decision issued by Appeals Chamber ruled to accept the case filed by Plaintiff/ ... against ZATCA. Since Appellant objects to Appeals Chamber decision, on the notice of final evaluation of the second and third periods of 2018, the second, third, fourth, and sixth periods of 2019, and the first and second periods of 2020 and on the acceptance of Appellee claim and the cancellation of its decision, and since it is established that the decision subject of appeal on the conflict in question matches the provision of the Law and the admissible grounds upon which it is based and which are sufficient to attribute its judgment to, as Chamber issuing the decision examined the source of the conflict with respect thereto and ended with the conclusion it reached in its verdict. And since Appeals Chamber did not notice grounds for remediation or comment in light of the defenses submitted before such Chamber with regard to the decision, Chamber acknowledges that such defenses shall not affect the decision's outcome. Therefore, Appeals Chamber concludes acknowledgment of appeal rejection the support of Appeals Chamber decision it reached in this clause, attributed to its grounds.



Therefore, and after due deliberation, Chamber unanimously decided the following:

Decision:

First: Accept appeal of/ ZATCA in form to be submitted within the period specified by law.

Second: Reject appeal of ZATCA regarding clause of excise tax differences, and support the decision issued by First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods in Riyadh No. (19-2022-ER).

May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.



Appeal Committee
First Appeals Chamber for Tax Violations and
Disputes Value Added and Excise Goods
issued in Value Added and Excise Goods in
Riyadh

Decision No. (VA-2022-746)
Appeal No. (E-81499-2021)

Keywords:

Appeal - Excise Goods Tax - ZATCA proving validity of its informing of taxpayer with conclusive evidence - Taxpayer acknowledgment of receiving all notifications sent by ZATCA - Accept appeal in form and reject it on merits and uphold Department decision.

Abstract:

Appellant demands cancellation of Department challenged decision to dismiss case in form. Appellant based its objection on invalidity of decision issued by Appellee and concluded with the request to accept appeal. ZATCA responded to Appellee that its decision was issued on (...) and Plaintiff did not object before ZATCA within the period prescribed by law. Therefore, ZATCA decision shall be deemed final and not disputed before any other agency. Appellant acknowledged before Department that it received all notifications sent by ZATCA, after ZATCA representative proved validity of information by submitting all conclusive evidences stating and confirming that ZATCA has informed Appellant of its decision dated ..., along with reminders dated ... for Appellant to pay. Appeal statement submitted stated that notification received by Appellant was related to imposition of a fine with no details at all, on the ground that there are no previous notifications with respect to the same matter. ZATCA responded that such allegations are a pretense against Appellant only, as its due awareness of a decision issued against it by ZATCA requires provision of an official objection. Appellant submitted an objection later, which means that it is aware that it is required to submit an objection and aware of the means through which objections are to be submitted to ZATCA. Appeals Chamber found that decision issued by Department to not accept the case in form for the lapse of the period prescribed by law. Since it is established that decision subject of appeal with respect to the conflict subject of consideration matches the provisions of the Law and the grounds on which it is based, and since Chamber did not find anything to be corrected or commented on with regard thereto in light of raised defenses submitted before such Chamber, Chamber acknowledged that such defenses shall not affect decision outcome. - Appeals Chamber ruled to: Accepting appeal in form and rejecting it on merits and upholding Department decision.

Documents:

- Article 49 of [Value Added Tax Law issued by Royal Decree No. \(M/113\) dated 02/11/1438 H](#)
- Article (3) of [Tax Dispute and Violation Committee Procedures issued under Royal Decree No. \(26040\) dated 21/04/1441 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions. 



On Wednesday 09/03/1444 AH, corresponding to 05/10/2022 AD, First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods, formed under Royal Decree No. (13957) dated 23/11/1439 AH, in accordance with Article 67.5 of the Income Tax Law, promulgated under Royal Decree No. (M/1) dated 15/1/1425 AH, as amended under Royal Decree No. (M/113) dated 2/11/1438 AH, met at its headquarters in Riyadh, to consider appeal submitted on 04/12/2021 AD, by..., holding national ID No. (...) As the due representative of Appellant Company on decision of First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh No. (24-2021-ER) in the case filed by Appellant against Appellee.

Since facts of this case have been stated in the decision subject matter of appeal, Appeals Chamber refers to this decision for avoidance of repetition. Whereas decision of Resolution Chamber ruled the following:

Not accept the case in form.

Since this decision was not accepted by Appellant, it submitted to Appeals Chamber an appeal statement that included its objection to the decision of the Tax Dispute and Violations Committee subject of the appeal, to not accept its case in form for the lapse of the period permitted by the Law for the objection, because the decision issued by Appellee is not valid. The statement was concluded with a request to accept the appeal.

In response to Appellant statement, Appellee submitted a counter-argument, summarized as follows: “1. ZATCA confirmed that the estimated Department decision is in compliance with the provisions of Tax Dispute and Violation Committee Procedures, as Article 49 of the Value Added Tax Law stated the following: “Any person against whom a penalty decision is issued may appeal such decision as per Tax Dispute and Violation Committee Procedures” Article 3 of Tax Dispute and Violation Committee Procedures has also stated the following: “ZATCA decisions shall be final and not disputed before any other agency in the following cases: 1. If a taxpayer does not object to the decision within 60 days from the date of notification thereof. And since the ZATCA decision is issued on 19/02/2020 AD and Plaintiff did not appeal before ZATCA within the period specified under the Law and referred to above, the ZATCA decision has become final and not disputed before any other agency.

2. Appellant acknowledges before Department that it has received all notifications sent by ZATCA, after the ZATCA representative proved the validity of information by submitting all conclusive evidences stating and confirming that ZATCA has informed Appellant of its decision dated 19/02/2020 AD along with reminders dated 01/03/2020 AD for Appellant to pay.

3. Appeal statement submitted stated that notification received by Appellant is related to the imposition of a fine with no details at all, on the ground that there are no previous notifications with respect to the same matter. ZATCA responded that such allegations are a pretense against Appellant only, as its due awareness of a decision issued against it by ZATCA requires the provision of an official appeal. It is worth noting that Appellant submitted an appeal later, which means that it is aware that it is required to submit an appeal and aware of the means through which objections are to be submitted to ZATCA”

On Tuesday 03/02/1444 AH, corresponding to 30/08/2022 AD, First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goodsheld a session to consider the appeal submitted via video conference, based on Article 15.2 of Tax Dispute and Violation Committee Procedures, which stipulates that: "Chamber sessions may be held via modern technical means provided by General Secretariat." Case file, including all replies and documents, and decision of Department subject of appeal were reviewed, and two parties were called upon, so Plaintiff representative ..., holder of National Identity No. (...), appeared Under Articles of Association attached to case file, as well as / ... (... Mr....., anational, holding National ID No..... appeared as representative of Defendant by virtue of authorization No. dated ... Issued by Deputy Governor for Legal Affairs, Department decided to open



pleadings by asking Appellant about the case. It replied that it is satisfied with appeal statement and memoranda submitted on portal of General Secretariat, and adheres to the evidence and defenses contained therein. By presenting this to Appellee representative, they replied that the memoranda submitted on the portal of General Secretariat are sufficient, and adheres to the evidence and defenses contained therein. When asked about what they wish to add, both parties replied that they are satisfied with what has already been submitted, and therefore, the door of pleadings were closed and the case was submitted for consideration and deliberation. After consideration and deliberation, Department decided to adjourn the case for further consideration and reflection.

On Wednesday 09/03/1444 AH, corresponding to 05/10/2022 AD, First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods held a session to consider the appeal submitted via video conference, based on Article 15.2 of the Tax Dispute and Violation Committee Procedures, which stipulates that: "Sessions of Appeals Chamber may be held via modern technological means provided by General Secretariat." Case file, including memoranda and documents, and Appeals Chamber decision subject of appeal have been reviewed. After discussion and deliberation, Chamber decided to adjourn session and issue decision.

Grounds:

Whereas, by reviewing case documents and appeal statement submitted, Chamber found that conditions for hearing appeal have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations and decisions. This makes appeal request acceptable in form for submission by a person of legal capacity, and within the period prescribed by law for its conduct.

On merits, after reviewing case files and examining all relevant documents, submissions and replies submitted by two parties, Appeals Chamber found that the decision issued by Department to not accept the case in form due to lapse of period prescribed by law. Since it is established that the decision subject of appeal with respect to conflict subject of consideration matches provisions of Law and grounds on which it is based, and since Chamber did not find anything to be corrected or commented on with regard thereto in light of raised defenses submitted before such Chamber, Chamber acknowledged that such defenses shall not affect decision outcome. Therefore, Appeals Chamber concludes by acknowledging rejection of appeal and upholding Department decision.

Therefore, and after due deliberation, Chamber unanimously decided the following:

Decision:

First: Accept Appeal from/ ... Company, with C.R. No. (...) In form for submission during the period prescribed by law.

Second: Reject Appeal of /... Company, C.R. No. (...) And uphold decision of First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh No. (24-2021-ER).

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.



Appeal Committee
First Appeals Chamber for Tax Violations and
Disputes Value Added and Excise Goods issued
in Value Added and Excise Goods in Riyadh

Decision No. (VA-2022-753)
Appeal No. (E-80654-2021)

Keywords:

Appeal – Excise Goods Tax – Reassessment of Excise Invoice - Product Price - Reject the appeal of taxpayer and uphold Department decision.

Abstract:

Appellant demands the cancellation of Department challenged decision to reject Appellant objection to the clause of the notice of reassessment of the selective invoice issued on 21/01/2020 and the fines resulting therefrom; based on valuation of price of final product above its value in the market – it was proven to Appeals Chamber that the decision issued by Department rejected the case filed by ... against ZATCA. Since Appellant objects to Department decision, on the notice of reassessment of the excise invoice issued on 21/01/2020 and the fines resulting therefrom, for the valuation of the price of the final product above its value in the market, and since it is established that the decision subject of the appeal on the conflict in question matches the provisions of the Law and the admissible grounds upon which it is based and which are sufficient to attribute its judgment to, as the Chamber issuing the decision examined the source of the conflict with respect thereto and ended with the conclusion it reached in its verdict. And since Appeals Chamber did not find anything to be corrected or commented on with regard thereto in light of raised defenses submitted before such Chamber, such Chamber acknowledged that such defenses shall not affect the decision's outcome. Taxpayer appeal is rejected and Department decision is upheld.

Documents:

- Article (15/2) of [Tax Dispute and Violation Committee Procedures issued by Royal Decree No. \(26040\) dated 21/04/1441 AH.](#)

Facts:

Praise be to Allah, and prayers and peace be upon our Prophet Muhammad, his Family, and all Companions.

On Sunday 13/03/1444 AH, corresponding to 09/10/2022 AD, First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods, formed under Royal Decree No. (13957) dated 26/02/1444 AH, in accordance with Article 67.5 of the Income Tax Law, promulgated under Royal Decree No. (M/1) dated 15/1/1425 AH, as amended under Royal Decree No. (M/113) dated 2/11/1438 AH, met at its headquarters in Riyadh, to consider the appeal submitted on 03/11/2021 AD, by..., holding national ID No. (...) In their capacity as owner of Trading Corporation, registered under C.R. No. (...) on the decision of First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh No. (37-2021-ER) in the case filed by Appellant against Appellee.



Since facts of this case have been stated in the decision subject matter of appeal, Appeals Chamber refers to this decision for avoidance of repetition. Whereas decision of Resolution Chamber ruled the following:

First: In form:

To Accept case in form.

Second: On merits:

Dismiss the case of Plaintiff/ ..., holding the National ID No. (...) In their capacity as owner of ... Trading Corporation, registered under C.R. No. (...), against Defendant, ZATCA on the subject matter.

Since this decision was not accepted by Appellant, he submitted to Appeals Chamber an appeal statement that included its objection to the Committee decision to reject its objection to Appellee decision regarding the notice of reassessment of the excise invoice issued on 21/01/2020 and the fines resulting therefrom, where Appellant objects to Appellee decision, in order to assess the price of the final product above its market value. The statement was concluded with a request to accept the appeal and cancel the Committee decision.

On Sunday 13/03/1444 AH, corresponding to 09/10/2022 AD, First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goodsheld a session to consider the appeal submitted via video conference, based on Article 15.2 of the Tax Dispute and Violation Committee Procedures, which stipulates that: "Sessions of Appeals Chamber may be held via modern technological means provided by General Secretariat." Case file, including memoranda and documents, and Appeals Chamber decision subject of appeal have been reviewed. After discussion and deliberation, Chamber decided to adjourn session and issue decision.

Grounds:

Whereas, by reviewing case documents and appeal statement submitted, Chamber found that conditions for hearing appeal have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations and decisions. This makes appeal request acceptable in form for submission by a person of legal capacity, and within the period prescribed by law for its conduct.

On merits, after reviewing case files and examining all relevant documents, submissions and replies submitted by two parties, Appeals Chamber found that the decision issued by Department ruled to reject the case filed by ... against ZATCA. Since Appellant objects to Department decision, on the notice of reassessment of the excise invoice issued on 21/01/2020 and the fines resulting therefrom, for the valuation of the price of the final product above its value in the market, and since it is established that the decision subject of the appeal on the conflict in question matches the provisions of the Law and the admissible grounds upon which it is based and which are sufficient to attribute its judgment to, as the Chamber issuing the decision examined the source of the conflict with respect thereto and ended with the conclusion it reached in its verdict. And since Appeals Chamber did not Chamber did not find anything to be corrected or commented on with regard thereto in light of raised defenses submitted before such Chamber, such Chamber acknowledged that such defenses shall not affect the decision's outcome. Therefore, Appeals Chamber concludes the acknowledgment of the appeal's rejection and the support of Department decision it reached in this regard, attributed to its grounds.

Therefore, and after due deliberation, Chamber unanimously decided the following:

Decision:

First: Accept the Appeal from/ ... , holder of the National ID No. (...) In their capacity as owner of ... Trading Corporation, registered under the C.R. No. (...) In form for submission during the period prescribed by law.



Second: Reject the appeal of / ..., holding the National ID No. (...) In their capacity as owner of Trading Corporation, registered under C.R. No. (...) and uphold the decision of First Department to Adjudicate Excise Goods Tax Violations and Disputes in Riyadh No. (37-2021-ER).

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.



Successfully Completed, Thanks to Allah