

Customs duty as the basic customs payment: features of legal regulation

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Abstract. Stable execution of a profitable part of the state budget in many respects depends on maintenance of completeness and timeliness of payment of customs payments, the basic place among which is occupied with the customs duties. Multifunctionality of the customs duties speaks various scientific approaches to its essence. It is considered as non-tax income of budgetary system, as a kind of customs payments, and as the tool of customs-tariff regulation of the foreign trade activity. Thus there is a debatable question on its distinctive features and the legal nature. Now strongly pronounced there is a fiscal value of customs payments, and in crisis conditions fiscal function of customs authority amplifies, which is negatively reflected in a problem of foreign trade development. In this connection the role of customs administration of the budgetary system incomes increases, which is based on providing the observance of the customs and the control over full and timely payment of customs payments. Realization of powers of customs authority should not restrain the rights and legitimate interests of the persons transferring goods through customs border of the Republic of Kazakhstan and responsible for customs payments in this direction [1]. Addressing in judicial authority for permission of the customs disputes, managing subjects win almost half of affairs, the most part of which concerns customs taxation, including customs duties payment.

[Azhimetov Y. **Customs duty as the basic customs payment: features of legal regulation.** *Life Sci J* 2014;11(7s):259-263] (ISSN:1097-8135). <http://www.lifesciencesite.com>. 53

Keywords: state budget, customs duties, customs-tariff regulation, administration of budgetary system incomes

Introduction

In spite of the fact that legal bases of calculation, payment and collection of customs duties are full enough regulated by the customs legislation, when levying on transferring goods through customs border of Republic Kazakhstan the problems connected with imperfection of separate positions of standard acts and law activity are arisen[2]. Among them: lacks of customs-tariff regulation of the foreign trade activity; points at issue of determination of customs value of the transferred goods; conflicts arising in the course of compulsory collecting of customs payments.

Besides, it is necessary to recognize such debatable and insufficiently investigated in a science questions, as definition of the concept of customs duties; setting of its legal nature; formulation and disclosing of specific features of customs duties; estimation of its role in system of budgetary system incomes.

The actuality of the problem speaks necessity of working out of the conceptual apparatus opening the legal essence of customs duties; the importance of legal bases analysis of customs-tariff regulation of the foreign trade activity and order of payment and collection of customs duties; expediency of activization of work on setting and

application of seasonal duties; the importance of the research of law enforcement practice of customs taxation with revealing of the problems and reasons of their occurrence. The given

questions demand their studying taking into account the system approach reflecting interrelation of standard regulation (including international level) and law enforcement.

The designated complex of questions confirms the actuality, the practical importance of the theme, necessity of the scientific working out.

Standard basis of research are positions of the Constitution of Kazakhstan Republic, laws, decrees of the President of Kazakhstan Republic, governmental decrees of RK, standard acts of authorities (including State customs service of RK), calculations regulating an order, payment and collection of the customs duties. Separate conclusions are constructed also on the analysis of norms of international law, including the international customs conventions [3].

Separate decrees of the Supreme Arbitration Court of the Republic of Kazakhstan and arbitration courts of provinces, statistical information; materials of scientifically-practical conferences, periodicals and the Internet were used as an empirical material.

The aim of the research

The aim of the present research is complex theoretical working out of legal bases of calculation, payment and collection of customs duties, prospects setting of their development and ways of perfection of normative-legal regulation and law enforcement [4].

Object in view achievement has defined necessity of the solution of the following tasks:

- formulation and disclosing of the basic features of customs payments, studying of features of their standard regulation;
- Working out of the conceptual apparatus allowing completely to investigate the essence of the customs duties (in particular, the concepts of customs payments, customs duties, customs-tariff regulation of the foreign trade activity, customs value are formulated);
- Determination of a place of the customs duties in system of incomes of the state budget, research of its legal nature and functions;
- Classification of the customs duties, systematization of basic elements of the customs duties;
- The customs duties characteristic as tool of customs-tariff regulation of the foreign trade activity;
- Revealing and the analysis of the basic problems of determination of customs value as bases for calculation of customs duties; offer of the basic directions of perfection of law experts on payment and customs duties collection.

The methods of the research

In the article there are used methods of the historical analysis, dialectic, system-structural, comparative-legal, formal-logic, technical-legal, statistical and others. So, the method of the historical analysis allowed to follow genesis of legal regulation of customs payments during the pre-revolutionary and Soviet periods; the comparative-legal method cooperated to comparison of the Kazakhstan legislation and norms of international law levied goods by customs duties; statistical was applied when determining a share of the customs duties in system of customs payments and in a profitable part of the state budget.

Used methods do not exclude possibility on occasion a simple statement of the facts for the purpose of giving of the corresponding argument of necessary evidentiary force.

The main part

Entering scientific discussion about the legal nature of customs duties, it is necessary to concern critically opinion on its tax character and to give reason for a position about its special place in system of obligatory payments. Customs duties features are necessary for differentiating on two groups. In the first group there are characteristic lines, uniting customs duties with other kinds of customs payments (taxes and tax collections), and in the second there are features, allocating customs duties in system both customs, and other obligatory payments.

So, the characteristic features uniting the customs duties with other customs payments are the following [5]:

- Customs duties are obligatory payment;
- It is a source of formation of the federal budget incomes;
- Customs duties represent fiscal payment;
- It is established by the federal law in the field of customs business;
- Customs duties along with other customs payments by the general rule are levied by customs authority which provide timely and full transfer into state treasury;
- Its payment is provided with the state compulsion.

To the second group of the customs duties features, allowing delimiting it from other kinds of obligatory payments and opening its legal nature, the following concerns:

- Customs duties are always connected either with import, or with goods export;
- Customs duties are refunded;
- It differs a target orientation;
- Its size does not depend on value of rendered services, therefore it is equivalent less;
- Customs duties are irregular payment.

The customs duties are obligatory fiscal, individually refunded payment which is not tax income of the federal budget, established by Customs code of RK with a view of customs-tariff regulation of the foreign trade activity in economic interests of the Republic of Kazakhstan, levied on import of the goods on customs area of the Republic of Kazakhstan or export of the goods from this area [6].

The fullest explanation of the essence of customs duties gives their classification. In the literature there was a position according to which both customs duties and their rates differentiate as the given kind of payment receives concrete expression in rates. They are used for customs duties calculation.

According to the determination way of customs duties rate divided into ad valorem; specific; combined.

According to the character of the foreign trade operation the customs duties are subdivided into: import; export; transit.

Depending on a functional purpose distinguish fiscal and protectionist customs duties.

Based on the goods country origin the customs duties rate can be: a) base (minimum); b) preferential; c) maximum; d) retaliatory.

According to the introduction order of customs duties are differentiated on groups: ordinary and particular.

The value of the customs duties rate serves as criterion for their differentiation on the high; average and low.

Taking into account of character of fastening independent and conventional duties are distinguished.

According to the period of validity the customs duties rate can be constant and temporary.

The actual question on expediency of introduction of seasonal duties is represented. The strategic task of their establishment consists in operative regulation of import or export of the goods.

It is expedient to apply them actively, especially concerning fruit-and-vegetable production during the summer-autumn period.

The legal essence and classification of customs duties allowed to reveal their main functions [7]:

- Fiscal is expressed in mobilization of customs duties for accumulation of incomes of the federal budget;

- Regulative means the use of customs duties with a view of protection of home market of the country and regulation of export and import of the goods;

- External economic consists in application of customs duties exclusively in sphere of the foreign trade activity;

- Stimulating is characterized by that the state minimizes the customs duties rates (gives tariff privileges) on import of the goods necessary for development of the Russian economy.

Category of customs duties is inseparably connected with the concept «customs-tariff regulation of the foreign trade activity». It is offered to understand a method of state regulation of the foreign trade activity as customs-tariff regulation of the foreign trade activity, expressed in an establishment by the Government of RK of import and export customs duties with a view of safeguarding of economic safety, protection of home market of the Republic of Kazakhstan, formation of a profitable part of the state budget, stimulation of progressive structural changes in economy, creation of conditions for effective integration of the Republic of Kazakhstan into the world economics.

In the world practice in the course of working out and confirming of the customs duties rates there are participated both the state authority, and the non-governmental organizations. For the purpose of optimization of a parity of interests of the public power and subjects of the foreign trade activity it is necessary for representatives of enterprise structures to give possibility of participation in discussion of the state measures expressed in pursuing of the customs-tariff policy.

The research operating in the Republic of Kazakhstan of custom duties and level of customs taxation has shown that customs-tariff regulation of the foreign trade activity to a large extent is the fiscal mechanism than the effective tool of a foreign trade policy of our state.

In this connection it is important to analyze operating import and export duties from the point of view of their influence on a competition. By results of this work the quantity and the value of duties can be reduced, which is not confirmed their fiscal or regulative value.

The main work regarding perfection of customs-tariff regulation should consist in reasonable decrease in rates of customs duties, when simultaneous protecting the competitive domestic enterprises by increase or preservation concerning high rates of the tariff. The considered problems solving cannot be only decrease in the rate of customs duties, but also setting of the fixed specific duty on certain group of the goods [7].

The analysis of law enforcement activity of customs authority regarding customs

taxation specifies to that the most effective way of increase in volume of the budget incomes from collection of customs payments is correct determination of customs value of the goods. At the same time customs value becomes today's most widespread object of trial.

Determination of customs value is one of the sharpest and debatable problems in customs. The conflict of interests of customs authority and participants of the foreign trade activity is based on potential disagreement of the first with account of customs value of the goods transferred through customs border. For this reason the majority of the customs-legal disputes resolved by arbitration courts concerns determination of the given value and calculation of volume of customs payments.

The customs authority solution on final size of customs value of the goods should be proved, motivated and contain instructions on the circumstances which are basis for independent determination of customs value of the declared goods.

As a result of the judiciary practice analysis on customs taxation it is necessary to allocate the following weak points in solutions of customs authority due to customs value:

- Non-substantiation of the solution of customs authority in rejection of the customs value of the goods by the declarant or in disagreement with the selected customs declarant a method of its determination;

- Non-observance of procedure of transition to other method of determination of customs value of the goods.

In the course of updating of customs value by customs authority the price information sometimes having out-of-date character is quite often used. In this connection it is necessary to have in view the price distinction of the transaction and the price information of other sources which are not concerning the transaction, does not prove accuracy of transaction conditions, but it is only the basis for carrying out of verifying actions aiming to find out these circumstances.

Investigating questions of customs duties payment and collection, we consider necessary to allocate their main principles:

- Compulsion of the customs duties payment when transferring of the goods and vehicles through customs border of RK (except for cases of customs duties relief for the

physical persons transferring the goods for a private use); independence of calculation of the customs duties value (it is estimated independently by the declaring);

- Accurate determinacy of a circle of the customs duties payers;

- Strict addressing of customs payments (they are credited into the account of State exchequer);

- Necessity of observance of terms of the customs duties payment;

- Customs duties payment only in Kazakhstan Republic currency;

- Maintenance of compulsory payment forced by the state.

Insufficient receipt of the customs duties in the federal budget testifies to presence of problems in the mechanism of levying and collecting of the customs duties. Performance of fiscal and regulating functions cause necessity of customs authority control of their calculation and payment, also collecting in case of debts occurrence. In our opinion, the judicial control over customs authority activity is more effective than departmental.

The analysis of administrative and judiciary experience allowed to reveal the basic errors supposed by customs authority when collecting of the customs duties [8]:

- Missing of direction terms of the requirement for the customs duties payment to the person responsible for payment;

- Missing of terms for the court application;

- Incorrect instructions in the basis requirement for the customs duties collecting that results further in debts collecting in a judicial order;

- Wrong calculation in the requirement of a shortage and fine;

- Non-observance of sequence of the customs duties collecting, etc.

For elimination of the problems arising in the course of the customs duties collecting, it is necessary to organize effective interaction of various structural divisions at customs level, and also customs authority with tax authority, banks, and courts.

Besides, there are offered the following directions of optimization process of the customs duties payment and collection: it is necessary to give regional customs offices and customs the right of solution-making on granting of delay and installment of customs payments; it is necessary to regulate accurately the rights of declarants and the duties of customs authority realized in the course of the customs duties collection;

it is expedient to give special attention to measures on perfection of an order of the customs duties collection which, on the one hand, should be directed on practice suppression of evasion from customs payments, and on the other hand, on unconditional maintenance of legitimate rights of diligent payers, creation for declarants as much as of possible comfortable conditions for customs payments [9].

Conclusion

Customs payments make a considerable share of the state budget incomes. The means coming from their payment are one of the main sources of the state budget incomes.

The share of customs payments in a profitable part of budgetary system continues to grow in modern Kazakhstan. The obvious importance of volume of customs payments in system of incomes of the state treasury causes necessity of detailed scientific research of their essence, legal nature, features of normative, and also their place determination in system of the customs legislation.

The basic place among all group of customs payments is occupied with the customs duties as it is paid in most cases when transferring of the goods through customs border, that is both as import and export, and, as a rule, it is a condition of such transferring.

Summary

The conducted research in the paper of the customs duties, problems of legal regulation and functioning of the public relations developing in the course of payment and collection, allows us to resume the following. The Soviet period of functioning of customs-tariff relations was

characterized by the state monopoly for foreign trade, and it also reflected tendencies to liberalization of trading-political relations of the USSR with foreign partners. Further requirements of formation of market economy for the country dictated the tasks of customs service transformation into really operating tool of customs regulation, protection of economic interests and

safety of the state, execution of a profitable part of the federal budget, development of the world customs normative.

The concepts «customs payments» (customs duties, taxes levied on import of the goods in customs area of RK, custom charges concern them) and «the payments provided by the customs legislation» should be distinguished, as they correspond as a part and whole. Last category includes means from realization of the confiscated property, and financial sanctions (penalties, fines), percent for granting of delay and installment of customs payments.

It is offered to understand as customs payments a system of obligatory fiscal payments - tax and non-tax incomes of the state budget fixed by customs and tax laws of RK, paid in connection with transferring of goods through customs border at the obligatory control over their payment from customs authority.

Studying of specificity of standard-legal regulation of customs payments allowed formulating their basic features to which it is necessary to concern [10]:

- Compulsion;
- Fiscal;
- Fixing under customs and tax laws of RK;
- Systematic;
- Inclusion in number of the federal budget incomes;
- Combination of tax and nontax incomes of budgetary system;
- Realization by customs authority of the payment control;
- Payment in connection with transferring of the goods through customs border;
- Payment maintenance with the state compulsion.

It is expedient to cancel such kind of customs payment, as collection for customs registration as customs registration by the legislation is given as functions of customs authority which they should execute according to the office powers,

instead of payment by their participants of foreign trade.

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5/8/2014