Amendment of the Law on Export Tax, Import Tax: Amending the regulations on refund of tax payment

VCN- Recognizing the problems in the tax refund, and to facilitate the taxpayers, the Ministry of Finance has proposed to amend the provisions on tax refund in the draft Law amending and supplementing some articles of the Law on Export Tax and Import Tax No. 107/2016/QH13. Accordingly, in cases where taxpayers had paid the import taxes and the export taxes, but they were not the original importer or final exporter of goods, or the quantities of import, export goods were less than the import goods, export goods, The Ministry of Finance suggested the Ministry of Justice evaluate this content.

According to the reflections of the provincial Customs, the provisions of Clause 1, Article 19 of the Law on Export Tax and Import Tax No. 107/2016/QH13 made it difficult for the enterprises to refund the overpaid taxes when the payable tax amount of enterprises was smaller than the paid tax amount. Therefore, in order to reform the administrative procedures, to facilitate the taxpayers in the reimbursement of overpaid taxes and to create efficiency and transparency in implementation, the Ministry of Finance has proposed to abolish the provisions on refund for cases where the import or export goods were paid, but they are not the import goods, export goods, or the quantities of import, export goods were less than the import goods, export goods that taxes were paid on (Point a, Clause 1, Article 19 of the Law on Import Tax, Export Tax) and relevant regulations (Article 19 of the Law on Import Tax, Export Tax) in order to be in line with the relevant laws.

According to the current regulations, the provisions of Paragraph 2 of Article 25 of Customs Law No. 54/2014/QH13: “the customs declaration is valid for the customs clearance within 15 days from the date of declaration” In the cases of: “the customs declaration of import goods has been registered but the actual goods have not been imported, or the goods have not been delivered through the supervised area”, these belong to the case of canceling the declaration at the request of the customs declarant according to the provisions of Item d.4, Point d, Clause 1, Article 22 of Circular No. 38/2015/TT-BTC dated March 25th, 2015 guiding the Customs Law.

Accordingly, the customs declarants determining the errors in the customs declaration, make a supplementary declaration for the goods being carried out with customs procedures before the Customs offices notify the direct examination of the customs dossiers, and make a supplementary declaration for the goods being cleared. Within 60 days after the customs clearance and before the Customs offices decide to conduct the post-customs clearance inspection and verification, unless the content of the supplementary declaration relates to the import-export licenses, the specialized inspection on the goods quality, health, culture, quarantine of animals and plants, food safety, is conducted. Past this time, if the customs declarants have just detected the errors in the customs declaration, they will make additional declarations and be handled under the provisions of law on tax and the law on handling of administrative violations (Item 4, Article 29 of Customs Law No. 54/2014/QH13). Therefore, in cases where they are not export, import goods, or the import, export goods are less than the import goods, export goods being paid tax, the declaration will be canceled or added under the regulations.

This is the basis for the Customs office to determine whether or not the overpaid tax amount requires reimbursing the taxpayers in accordance with the law on tax administration.

According to the Ministry of Finance, the provisions at Point a, Clause 1, Article 19 of the Law on Import Tax, Export Tax are under the case of tax refund according to the legal regulations on the export tax and import tax, and under the case of the classification of tax refund dossiers as prescribed on tax administration that lead to raise the administrative procedures in the implementation.

Therefore, in order to ensure the appropriateness and consistency with the Law on Tax Administration, the tax administrative reform is to facilitate the taxpayers in refunding the overpaid taxes when the payable taxes of taxpayers are more than the paid tax amount. At the same time, to create transparency and efficiency in implementation, and in accordance with the spirit of the Government in Resolution No. 19-2017/NQ-CP dated February 6th, 2017, in the proposed amendments to the Law on Import Tax, Export Tax, the Ministry of Finance has proposed to remove the provisions at Point a, Clause 1, Article 19 of the Law on Import Tax, Export Tax 107/2016 / QH13; At the same time, to; amend the order of the corresponding points of Clause 1, Article 19 of the Law on Import Tax, Export Tax and remove the corresponding provisions in Clause 2, Article 19 of the Law on Export Tax and Import Tax.

In addition, the Ministry of Finance also proposed to amend and supplement the tax refund regulations for the following cases: “The taxpayers have paid taxes on the import goods for production and business, have gone into production and sold the products to other organizations and individuals, then other organizations and individuals continued to produce the goods for export and are actually exported, or enter into joint ventures with the enterprises having the production establishments to produce the goods or to outsource, to continue production and export the products directly…” (Point d, Clause 1, Article 19 of the Law on Export Tax, Import Tax).

At Point d, Clause 1, Article 19 of the Law on Export Tax, Import Tax No. 107/2016/QH13 stipulates the tax refund for the following cases: “The taxpayers have paid taxes on imported goods for production and business but have gone into producing the exported products and have actually exported”. Accordingly, the taxpayers are refunded the import taxes when they satisfy the following conditions simultaneously: paid taxes on the import goods; have the production facilities and took the imported raw materials and materials to produce the export goods, the importers have to export directly.

However, the Law on Export Tax, Import Tax does not stipulate the tax refund in case that the current production of export goods of the enterprises is appropriate with the satellite companies: importing the raw materials, and the materials, only producing some parts, details of goods for selling to other enterprises that are used for export production (ie the importers do not export directly but sell the products made from the imported raw materials, supplies and components to other companies to continue production and export) and the import company and export company are one, they have the production facilities but they associate and in joint venture to produce the products for export; they have the production facilities and do not produce their own products, but they hire their production facilities and hire other enterprises to process the export products; they do not have the production facilities, do not produce their own products, but hire the production facilities and hire processing of export products.

Therefore, in order to ensure the refund of the tax on the right subjects, in the nature of the type of

import to produce the export goods, and not to miss the cases of the same nature of this type, and in line with the policy of export encouragement, development of supporting industries of the Party and State: Decision 2471/QD-TTg dated December 28th, 2011 by the Prime Minister, Decree No. 111/2015/ND-CP dated November 3rd, 2015 by the Government, Decision No. 68/QD-TTg dated January 18th, 2017 by the Prime Minister, the Ministry of Finance requested to supplement the tax refund in cases: the taxpayers have already paid taxes on the imported goods for production, business, have already put into production of products and sold to other organizations or individuals, those organizations and individuals continued to produce the goods for export and exported actually, or the taxpayers conduct joint ventures with the enterprises having other export-producing facilities to produce and export the products directly

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