



LEGAL ALERT

THE SUPERIOR COURT OF JUSTICE AND THE TAXATION ON BACK-TO-BACK TRANSACTIONS

Recently, the Superior Court of Justice entered a decision about the levy of PIS/COFINS contributions on back-to-back transactions, in which a Brazilian company intermediates a purchase and sale transaction between two customers located abroad.

In other words, in such transactions the company operates as a reseller, by purchasing a good from a customer located in a country, and selling it to another customer, also located abroad. As a matter of logistics, and bearing in mind the reduction in importation costs, there is no physical entry of the good into the Brazilian territory.

In the case reviewed by the Superior Court of Justice (REsp 1.651.347/SP), a company manufacturer and seller of rubber goods challenged the position adopted by the Federal Tax Authority (Inquiry Solution N°202/2003) that in such transactions, it would not be possible to typify a resale to a final recipient as exportation and, accordingly, the revenue earned would be exempt from PIS/COFINS contribution payment. Nevertheless, the Justices have not accepted the arguments and unanimously understood that the essence of exports is precisely the exit of goods, which have previously and physically entered the national territory, which does not occur in the case of back-to-back transactions.

Therefore, considering the characteristics of the transactions described by the company, the position adopted by the Superior Court of Justice is that the revenue from a purchase and sale transaction occurred exclusively abroad cannot be understood as exportation, and the contributions to PIS/COFINS are due and payable. The Superior Court of Justice decision is still subject to appeal, including the possibility of such decision being reviewed by the Federal Supreme Court from a constitutional standpoint.

Therefore, we wish to draw attention to the taxation method of back-to-back transactions and to potential risks of tax-deficiency notice by the Federal Tax Authority, now with an interpretation about the matter backed by the Superior Court of Justice's new decision, considering that there is no settled position adopted by the Judiciary about the matter.

For more information, please contact the lawyers of the Tax Team of Gasparini, Nogueira de Lima e Barbosa Advogados.