

Țuca Zbârcea & Asociații obtains a landmark High Court of Cassation and Justice ruling regarding the refund of excess VAT paid due to unlawfully imposed rate



Țuca Zbârcea & Asociații has obtained, for an optics company, a final judgment of the Supreme Court on the full refund of VAT collected unlawfully based on a rate wrongly imposed by the Romanian State. Refunded amounts will also include tax interest accruing from the date when the undue VAT amounts were paid to the State budget, not only from the date of submission of the VAT statement whereby the amounts were requested.

The High Court of Cassation and Justice has confirmed as final a decision of the Brasov Court of Appeal to refund to a well-known company in the medical equipment optics market the VAT paid to the State for 5 years on the basis of a rate wrongly imposed by the Romanian State authorities.

Thus, for a period of 5 years during the last decade, as requested by the tax authorities, said company had paid a 19% and 24% standard-rate VAT for the sale of its products to consumers. Following the company's diligences, the Ministry of Public Finance acknowledged in a letter that the company's products fell within the category of medical prostheses and that a reduced VAT rate of 9% was, in fact, applicable to the supply of such products.

Subsequently, the company applied for a refund of excess tax. However, it was refused by the tax authorities on both substantive and formal grounds. The ensuing tax litigation involved the resolution of complex tax law matters concerning the correct interpretation of the principle of tax neutrality, the relevance of the application of the principle of percent increase to the method of calculating the price to the end consumer, the possibility of claiming formal obstacles for the refusal to refund VAT and, last but not least, the time from which the accessories must be calculated for refund purposes.

The claimant company was represented by a team of lawyers from **Țuca Zbârcea & Asociații** law firm, led by **Dan Cristea**, *Partner*: "We salute the decision of Romania's High Court of Cassation and Justice which puts an end to a dispute that lasted 8 years and went through 3 distinct procedural cycles. It sheds more light on a series of complex tax law matters, each involving interpretations of rulings by the Court of Justice of the European Union. It is also a sign that a trader aware of its rights before the State will eventually see them respected, no matter how long the journey may be."

Țuca Zbârcea & Asociații has a leading practice in Dispute Resolution, the firm's pre-eminence in this area being already acknowledged by renowned international publications, such as *Chambers & Partners*, *Legal 500* and *the Global Arbitration Review*.

More so, the firm is a recipient of the "Law Firm of the Year in Romania for Dispute Resolution" Award by

Benchmark Litigation Europe (a publication of Euromoney Legal Media Group), one the most coveted and prestigious international accolades for law firms specialising in litigation and arbitration.