



Tax News Flash

- Customs

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Samjong KPMG provides readers Customs related recent local issues and trends. This newsletter is a monthly publication of Samjong KPMG. If you need more detailed explanation, please feel free to contact Key contacts.



The following is recent Supreme Court Decision related to Customs in Korea

1. Customs valuation method of imported goods without additional payment by the buyer as the purchasing condition of the contract [Supreme Court, 2018DU47714, November 17, 2022]

1) Facts

Pharmaceutical company H (“plaintiff”) signed a contract (“contract at issue”) with AMANO ENZYME INC. (“Amano”) to import pharmaceutical raw materials. Under the contract at issue, Amano should provide the plaintiff with goods equivalent to a certain percentage of the annual purchase quantity in the name of ‘free samples’. The plaintiff received SKSD (“goods at issue”) without additional payment and filed import declarations for the goods at issue with a transaction price of 5,000 JPY per unit.

Seoul Customs House, the disposition authority, denied the customs value reported by the plaintiff on the grounds that the goods at issue were imported free of charge and did not fall under “goods sold for export to Korea”, and determined the customs value based on the purchase price per unit stipulated in the contract at issue, using the customs valuation method stipulated in Article 31 of the Customs Act (Transaction value of identical goods). Accordingly, the Customs corrected the customs duties and VAT (including penalties) and notified the plaintiff (“disposition at issue”).

2) Issue

Customs valuation method of the goods imported without payment by meeting the annual standard quantity of the purchase agreement condition

3) Supreme Court's Decision

The agreement stipulates that if the purchased quantities are less than 1,688BU per year, 10% or 11% of the annual purchase quantities shall be additionally supplied to the buyer, and if the purchased quantities are more than that, additional goods shall be supplied at a higher percentage than the percentage mentioned above for each quantity range. Therefore, it is already settled that additional goods equivalent to a certain percentage of the annual purchase quantities shall be supplied. In addition, when the plaintiff receives additional goods under the agreement, the 'total annual payment amount' does not change, but the 'total annual purchase quantity' increases, and the transaction price per unit is substantially reduced.

Considering these points, the contract at issue is an annual purchase contract, which sets a provisional base price and determines the final transaction price on an annual basis as per the annual total payment amount and the annual total purchase quantity when the additional quantities is determined depending on the annual purchase quantity. The number of goods additionally supplied is not small, which corresponds to more than 10% of the annual purchase quantity. Even though the goods at issue were supplied in the name of 'free samples', and the plaintiff did not pay the price for them at the time of the import, it cannot be seen that they were supplied without any cost. Therefore, it is difficult to regard the goods at issue as "goods imported free of charge."

4) KPMG's Observation

It is the first precedent to state that the goods additionally supplied without payment, in a certain percentage of the annual purchase quantity under the annual purchase contract, do not correspond to the "goods imported as free of charge". Therefore, the transactional value of the goods shall not be denied and determined based on the transaction value of identical goods.

In other words, this case confirms that the transaction price cannot be denied unconditionally even if the goods are imported "free of charge" nominally but are purchased commercially in substance. The customs value can be determined in consideration of the unit price by dividing the total paid amount by the total quantity.



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