



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 a recent Customs-related Court case in Korea

1. Whether the value of goods imported from a bonded area could be determined as transaction value under Article 30 of the Customs Act [Supreme Court, 2020du51242]

1) Background

The Korean Customs Service has recognized the price at the time of entry into the bonded area as the transaction value for determining the customs value in bonded area transactions. This standard has also been recognized by Korea Tax Appeals Tribunal in cases considering the determination of whether the goods were “goods sold for export to Korea” as defined in Article 30 of the Customs Act as follows.

Tax Tribunal, 2017-Customs-0144

In light of the fact that Article 30(1) of the WTO Valuation Agreement and the Customs Act refer to 'goods sold for export', and the WCO Technical Committee on Customs Valuation Opinion 14.1 states that "only transactions in which goods are actually transferred between countries can use the transaction value method of customs valuation", the goods in question were traded after being imported into Korea's customs territory, so it is difficult to consider them as goods sold for export to Korea.

However, recently, a Supreme Court precedent has appeared that recognizes ‘the price at the time of importation from the bonded area’ as the transaction value in bonded area transaction,

which is contrary to the existing standard of the Korea Customs Service, and we would like to share the relevant information.

2) Issue

Applicability of the method of determining the customs value under Article 30 of the Customs Act in determining the customs value of goods imported from a bonded area

3) Decision

The court recognized the value of the goods imported into the bonded area as the transaction value for the following reasons.

- ① If the goods at issue transited through a bonded area, it is reasonable to conclude that 'imported goods' as defined in Article 17(3) of the Enforcement Decree of the Customs Act means goods that have been brought from a bonded area and does not include goods that have merely been brought into a bonded area, as claimed by the defendant. Article 2(1) of the Customs Act defines 'importation' to mean "the importation of foreign goods into Korea (transit through a bonded zone means importation from a bonded area) or consumption or use in Korea", where 'importation' means that the goods are actually released from the restrictions imposed by the Customs Act and become domestic goods or enter into freely distributable status.
- ② The meaning of 'transaction involving the actual international movement of goods' should not be determined strictly based on the border line, regardless of whether the goods are subject to customs duties, have been cleared for importation, or have been transferred internationally throughout the transaction, and regardless of the circumstances leading up to the transaction or the overall sequence of the transaction.
- ③ Overseas exporter has consistently entered import and export contracts with domestic companies for titanium dioxide including the goods at issue. Looking at the process of concluding import and export contracts, it is difficult to conclude that the goods at issue do not constitute 'imported goods' or 'goods for export and sale' as defined in the Article 30(1) of the Customs Act by considering this transaction as a domestic transaction.

4) KPMG's comment

The court noted that importation, the opposite of exportation, means 'the process of being released from the restrictions of the Customs Act and being converted into domestic goods in Korea', and that the export sales transaction referred to in the above Customs Act should be interpreted in terms of importation. Even if the goods are physically located in Korea, they are not exported to Korea until they are delivered from the bonded area to the plaintiff by specific order of the plaintiff, so the price agreed between the plaintiff and the overseas exporter is also recognized as the transaction price applicable to this export sales transaction. It is reasonable

in that the court defined export or import in a normative way, not simply the physical movement of goods, and determined the transaction that caused such export or import, and this legal reasoning will have great implications for similar cases in the future. That is, this court case is significant in Korea as it means that if there is an issue of determining the customs value of a transaction through a bonded area, it can be determined differently depending on the individual transaction structure based on the new court case.

If the company have a bonded area transaction and have been determining the customs value based on the existing standards of the Korea Customs Service, it is recommended to obtain professional opinions and explore the opportunity to apply for the tax refunds by trying to receive an official ruling.



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