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ZOOM IN TRADE

SHINHAN Customs Service Inc.

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Where Is Grace Chang?

Unbreaking Heart (The important thing is the heart that does not break)*

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At last year's World Cup games, the Korean national team advanced to the round of the top 16. It was the result of the Korean soccer team, ranked 28th, defeating Portugal, 8th in the FIFA rankings. The goal of participating in a match is to beat the opposing team. You must win the game to advance to the next level. In order to win the game, players, managers and coaches all diligently prepare for it taking one step at a time towards the goal of victory.

On December 3, 2022, the phrase expressing the hearts of the players who won the game and the people cheering for them was 'The most important thing is an unbreaking heart'. I applaud the players who did their best without giving up in difficult moments towards the goal of victory.

*The New Customs Study for this month is '**Will the customs view overseas direct purchases as a purchasing agent service or an import agent service?** ', Analysis on Recent Customs Judicial Precedent covers '**Disposition that Excluded the Application of the Conventional Tariff Rate Considering that the Certificate of Origin at Issue Submitted by the Claiming Corporation at the Time of import Declaration of the Item at Issue Does not Meet the Requirements for Application of the Korea-China FTA (2022-0114)**', and HS case solved by logic reports **'Decision on tariff classification for butane and taxation lacking fit-for-purpose'** and Global Customs Insight is **'Introduction to OECD Guidelines on Transfer Pricing in the COVID 19 Pandemic Situation – 4. Normal Price Calculation Method Pre Approval System'**, and FTA and import/export practical business guide is **'Extension of Application Period for***

Customs Duty Refund on Raw Materials for Export'. *In addition Contents and Opinion of Customs Trade Revision is* ***'Partial revision of the 「Value-Added Tax Act」***

The phrase 'Unbreaking Heart' was first introduced in the 'League of Legends (LOL) World Championship', a global online game competition held before the World Cup. The Korean team, which had excellent skills, was defeated in the first round. In an interview with the media, the team leader said "We lost, but if we don't fall apart, I think we can win." The reporter turned this into a great article titled "Defeat in Rogue is okay, the important thing is a heart that doesn't break." To the leader of the DRX team who achieved the final victory, the goal of team members working together to the end takes precedence over the goal of winning.

We will meet victory somewhere along the way when we walk together in cooperation. Victory is not the direction or goal for life. Working together and moving forward until the end was an important goal. If you do not give up and go forward with the spirit of 'unbreaking heart', you will be able to meet victory or success on the way. If you do not encounter success or victory this time, it is okay because if you keep moving forward without being shaken, you will get to meet success or victory one day. It is more important that there are colleagues or neighbors who can help each other, trust, and stay together.

The writer Lee Min-jin, who quit her lawyer job at the age 26 and published her first book at 37 says about herself, 'I'm not smart, but I had the strength to endure those days because I had a dream' She continues "When you start chasing happiness, you start thinking relatively negatively about your life.", "Thinking of the present moment as a gift is a way to be happy." Having worked as an apprentice writer for 11 years, her courage to write and wait those long years was attainable because she remembered where she came from, focused on what is important, and strived to persevere.**

Winning in competition brings us joy. When a book you publish becomes a bestseller, it opens doors and opportunities. You will be praised by many people and you can become financially prosperous. Is happiness complete now? Did you reach your goal? The joy that lasted for days or months fades little by little. We have to start looking for a new trophy again.

We live day by day, from birth to death. There are things we have to handle every day, and every moment we need to make decisions and choices. Your decision will vary depending on your life goals. Is winning

the competition your goal, or is doing your best until the end through working together with your colleagues your goal? Should I live searching for my happiness, or should I cherish this moment and live up to the best of my ability? We have to decide what is important.

It is 2023. The new year has begun and once again we clench our fists and prick our ears at the starting line. The start signal went off and we took a step with a full force to live a new year. We run looking forward to the goals that will be achieved throughout the year. May it not be your goal to pursue the lust of the flesh, the lust of the eyes, and the pride of life. I hope it's not the moment you choose to go beyond what you need and fulfill your desires. You have to alert your mind on the not-so-short 365 days.

"Please tell me where I have to go." Alice asks the Cheshire Cat. The Cheshire Cat says to Alice,"It depends on where you want to go."***

Where would you like to go? In this year, where did you set the goal to continue moving forward with an unbreaking heart? Thank you.

So don't worry about what you will eat, what you will drink, or what you will wear. ..But you must first seek the kingdom and its righteousness. Then all these things will be added to you. - Matthew 6:31, 33.

*Kang Yoon-joo, "2022 Korea is a Middle-earth craze," Hankook Ilbo, 2022.12.05.

** Kim Ji-soo, "Kim Ji-soo's Interstellar, Lee Min-jin," Chosun BIZ, 2022.12.24

*** Koo Eun-seo, "The adventure began when I entered the rabbit hole, the Korean economy, 2023.1.28

The New Customs Study

Will the customs view overseas direct purchases as a purchasing agent service or an import agent service?

- Depending on the concept and perspective, the direction of regulation for public safety differs-

On January 26, 2023, the Korea Economic Daily reported on pages 1 and 5 under the theme of Korea lagging behind in the 120 trillion cross-border parcel delivery market, logistics companies should not insist on regulations that run counter to the trend of cross-border parcel delivery in order to expand consumer choices.

It reports, "It is a matter for consumers to choose whether to receive after-sales service instead of purchasing products that have gone through official customs procedures at a higher price, or to give up after-sales service instead of purchasing products directly at a cheaper price. If consumers choose to manage the food through the global distribution center(GDC) at Incheon Airport, the consumer can manage the products more systematically than regular direct purchase products."

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Logistics companies doing global delivery want two things: expansion of duty free imports for imported goods under USD 150 per case and exemption from import regulations such as food safety and cosmetics safety.

Currently, in Korea, the amount of direct purchase imported from overseas is about 10 times higher than the amount of reverse direct purchase exported overseas. It is due to the fact that the standards for self-use approval are looser than other countries as they are set the same as the standards for self-use for overseas travelers.

According to the Korea Economic Daily, the Galápagos Regulations block the new logistics business by 120 trillion, and this makes wonder whether it is in conflict with the fact that there are more overseas direct purchases than reverse direct purchases overseas

In 2021, health functional foods purchased through overseas direct purchase from places such as iHerb Market are 15 million cases (880 million dollars), other foods are 11 million cases (440 million dollars), and cosmetics are 4 million cases(170 million dollars). More than 30 million items subject to import safety regulation per year are supplied to individuals in the name of overseas direct purchase without safety inspection.

Looking at the import regulations of neighboring countries, for the products sold within the country, advanced countries such as the United States and Japan do not exempt imported food, imported cosmetics, and imported medicines from import safety inspection, whether they are e-commerce or offline sales, and make the import agent import and sell the safety confirmed products.

I would like to see if food and cosmetics sold on Amazon in the United States or Amazon in Japan can be sold without receiving safety inspections from the US FDA or Japan's Ministry of Hygiene. All items that receive Amazon's fulfillment service must pass the laws of that country. Fulfillment service here refers to the entire process of picking, packing, and delivering products through a distribution

center according to customer orders and taking responsibility for refunds and exchanges according to customer requests, rather than simple simple delivery.

Even though only imported goods that have passed the import safety inspection are imported and sold through e-commerce or general sales, Korea applies the self-use recognition standard for items purchased overseas by individuals in too many fields, thereby granting many exemptions, and is endangering the safety of the public

Korea exempts import safety requirements along with tax exemption, saying that what an individual orders online from abroad will not be sold to others, but will be self-consumed, but the individual is asked to bear all responsibility. Although there are no immediate health problems, it is not known what safety hazards may arise in the future.

In the past, the purchase for rejuvenating medicine, weight loss food, etc. started in the United States and moved to Korea like an epidemic once every 10 years. Health food and medicines that most houses had one or two bottles were brought in in small quantities by bundlers between LA and Korea in the past. Now it is necessary to be seriously aware of the fact that tens of millions of health supplements and medicines are pouring in without safety inspection by using self-use recognition standards.

Then why doesn't Korea have safety regulations for health supplements and medicines that individuals purchase over the Internet?

It is worth noting that the important conceptual difference here is that the customs offices of the United States and Japan see the companies that act as agents for customs clearance of e-commerce goods as import agents, but Korean customs see them differently as purchasing agents. An import agent acts on behalf of an exporter, and a purchasing agent acts on behalf of an individual buyer who imports. The work is the same, but the customs authorities think differently about the obligation.

The United States and Japan have import agents take responsibility on behalf of exporters in the event of problems in the safety inspection of the goods and post-purchasing, whereas in Korea, the purchasing agents act on behalf of individual buyers, so safety inspections and in the event of a post-problem, the individual consumer should take responsibility on his or her own. If the approach of the concept of a purchasing agent is taken, even if damage occurs due to food or medicine that is harmful to public health,

the individual has no choice but to bear it. Since the law does not apply to overseas exporters, they are not held responsible even if a problem occurs.

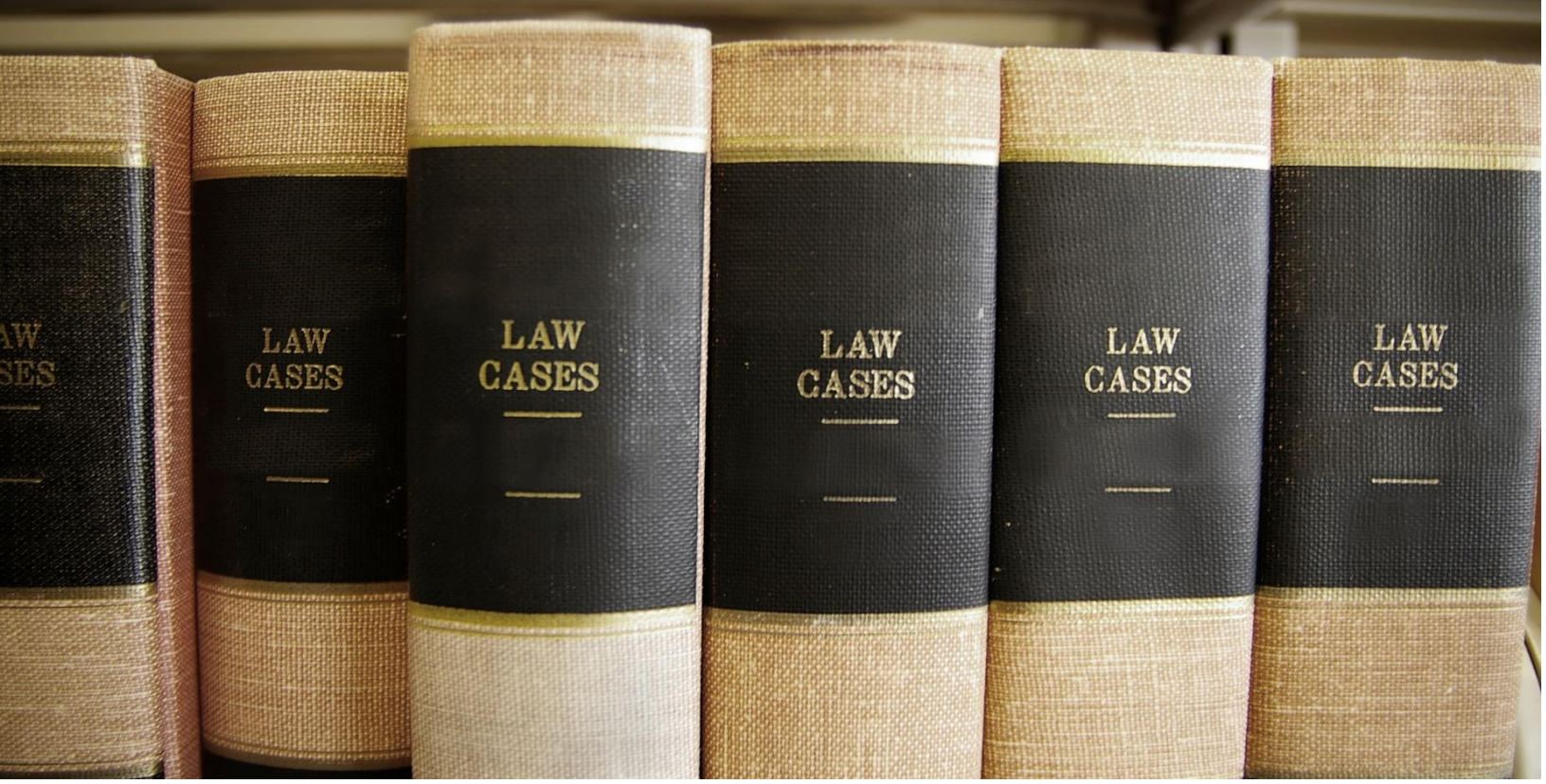
From the point of view of individual buyers, e-commerce products are purchased directly from abroad, but from the perspective of customs and the Ministry of Food and Drug Safety, e-commerce products and general imported products must undergo the same safety inspection, and efforts must be made to ensure that there are no exceptions or blind spots. Tens of millions, not thousands of cases per year go through customs without safety inspection. It is difficult to see that the safety regulatory authorities and customs authorities who are obliged to take responsibility for the safety of the people are doing their job responsibly. Whether the goods imported and consumed by the people are imported through e-commerce or general import, only the ones whose safety has been confirmed must be imported, and those whose safety has not been confirmed must not be imported under any circumstances. Simply explained, it is the same principle that eating at a restaurant should be safe, and eating delivered food should equally be safe.

Individuals should not be held responsible for the safety of imported food, health functional foods, medicines, and cosmetics, but companies that benefit from the transaction should be given that responsibility, whether the import agency or foreign exporter. It is the government's duty to create a system that allows safety measures to be provided at a reasonable level.

The same standard of the self-use acceptance standard of the purchased product that foreign travelers ask the seller of the product locally and test it is applied on the same line as the self-use acceptance standard of the product purchased from all over the world in the limited space of the Internet. This needs to be reviewed anew this year regardless of the expected quantity or circumstances at the time of enactment of the first e-commerce customs clearance notice.

In a situation where 30% to 40% of the entire population uses overseas direct purchases, the lives and safety of the people should not be neglected any longer just because the standards for self-use of goods subject to import requirements for e-commerce goods have been set.

For the safety of imported food, medicine, and cosmetics, we need to take a good look at the systems of advanced countries such as the United States and Japan and improve our systems.



Analysis on Recent Customs Judicial Precedent

Disposition that Excluded the Application of the Conventional Tariff Rate Considering that the Certificate of Origin at Issue Submitted by the Claiming Corporation at the Time of import Declaration of the Item at Issue Does not Meet the Requirements for Application of the Korea-China FTA (2022- 0114)

1. Facts

● After importing the disputed goods from the disputed exporter, the claimant filed an application for the application of the conventional tariff rate under the Korea-China FTA after obtaining a certificate of origin, which was accepted by the disposition agency.

● The disposition agency conducted an origin examination on the disputed goods, confirmed that the claimant applied the conventional tariff rate with the certificate of origin at issue that did not meet the requirements for application of the Korea-China FTA, and guided the claimant to self-inspection of origin. However, the claimant stated that the submission of the certificate of origin was not possible.

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● Accordingly, the disposition agency notified the claimant that the application of the conventional tariff rate for the item at issue was excluded, and the claimant applied to the disposition agency for exemption from the imposition of additional tax. The disposition agency denied this application, and notified the corrected tariff and the additional taxes in accordance with FTA Special Customs Act 35, (1), No. 7

2. Claimant's Argument and Disposition Office's Opinion

(1) claimant's claim

● The claimant argues that if there had been a request for the submission of related documents at the time of import declaration documents for the item at issue or within a year from the declaration, the claimant could have obtained a valid certificate of origin from the exporter at issue and could have submitted to the disposition authority. But according to the claimant, the disposition agency's certificate origin examination took place after the eligible time period had elapsed so the claimant missed the deadline for the issuance of a valid certificate of origin from the exporter at issue. So the disposition of the disposition agency is unreasonable.

● This tax penalty is unfair. The disposition agency is responsible for not properly checking the appropriateness of the certificate of origin even though it inspected and reviewed the item at issue at the customs clearance stage. In addition, if the disposition agency requested the applicant to supplement the appropriate certificate of origin within one year after accepting the import declaration, the applicant could have responded sufficiently, but this opportunity was not given. As such, the claimant has a legitimate reason for the insufficient tax amount, so the penalty tax imposition in this case should be canceled.

(2) Opinion of Disposition Agency

● Since the claimant did not possess a valid certificate of origin under the Korea-China FTA and received the application of the conventional tariff rate, this disposition is lawful. In addition, the examination of origin for item at issue was conducted within a legal period according to the FTA Special Tariff Act, etc., and

the claimant did not possess a valid certificate of origin at the time of application for the application of the conventional tariff rate, so this disposition is lawful.

● If the claimant had checked the basic provisions of the FTA Special Tariff Act, he could have known that the conventional tariff rate could not be applied if he did not have a preferential certificate of origin or only with a non-preferential certificate of origin. But since the customs duty rate was improperly applied due to the claimant's ignorance or mistake about the law or gross negligence in misunderstanding that the disputed certificate of origin corresponds to a preferential certificate of origin, it is difficult to see that the claimant has a justifiable reason for exempting the penalty tax.

3. Hearing and Judgment

● In accordance with the Korea-China FTA and the Special Act on FTA, when applying for the application of conventional tariffs, the importer must prepare proof of origin, but the claimant was found not to have an appropriate certificate of origin when declaring the import of the item at issue. Although the head of the customs office accepted the declaration and inspected the item, it was judged that it was difficult to see that there was an error in the disposition.

● It was judged that there was no error in the disposition of refusal of the penalty tax exemption application in this case with following reasons; The point the claimant received the conventional tariff by submitting an invalid certificate of origin at the time of applying for the application of the Korea-China FTA conventional tariff for the goods at issue, the point when the head of the customs office received the application for the application of the conventional tariff, it is stipulated the import declaration should be reviewed after the declaration is accepted, the point that the burden of proving the origin for goods subject to the conventional tariff is on the claimant, who is the applicant for the application of the conventional tariff rate, and the fact that the disposition agency conducted the goods inspection and document review during the customs clearance process does not transfer the responsibility to the disposing authority.

4. Implications

In order to be subject to the FTA conventional tariff, the goods concerned must be subject to the conventional tariff according to the agreement, the country of origin must be the contracting partner country, and the application for the conventional tariff must be applied at the time of import declaration.

Although it is not mandatory to submit proof of origin when applying for a conventional tariff application, it is essential to have legal documents because you must be able to submit a valid certificate of origin when requested by customs.

HS case solved by logic

Decision on tariff classification for butane and taxation lacking fit-for-purpose

1. facts

- The claimant received a simplified flat-rate refund for the butane gas cartridges cleared for export under HSK 2901.10-1000 from January 2001 to August 2003 (hereinafter referred to as "the item at issue").

- The Korea Customs Service instructed to conduct a thorough customs refund review as the issue goods refunded as HSK 2901.10-1000 (refund amount: 60 won) through review policy No. 47130-367 (2003.5.7) can be classified as HSK 2711.13-000 (refund amount: 100 won). The Disposition Office also notified the Claimant that the goods in question may be classified under HSK 2711.13-000.

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- Accordingly, the claimant applied for preliminary review of item classification to the Central Customs Analysis Center, and on June 4, 2003, the Central Customs Analysis Center notified the claimant that the item at issue was classified under HSK 2901.10-1000, the same number as the export customs clearance.

- However, on September 1, 2003, the item classification committee of the Central Customs Analysis Center decided to change the item at issue to HSK 2711.13-000, and the claimant was notified of the correction in the pre-examination.

- As the item classification of the item at issue was changed to 2711.13-000, the disposal agency issued a penalty charge of XX won, reporting that the refund amount from the export from January 2001 to August 2003 was over-refunded under HSK 2901.10-1000, the item classification number before the change.

- Afterwards, the Commissioner of the Korea Customs Service announced a change in the item classification of the item at issue, and the claimant appealed and filed a request for review.

2. issue

(Issue 1) Whether to classify the item at issue as HSK 2711.13-000 (refund amount: KRW 100), considering it as butane gas that is a combination of two or more substances with different physical and chemical properties, or to classify as HSK 2901.10-1000 (refund amount: 60 won) considering it as a chemically single organic compound butane gas.

(Issue 2) Whether the rectification of the item at issue violated of the principle of the prohibition of retroactive taxation and the principle of good faith
(Issue 3) Whether the notice of penalty is an unfair administrative measure taken without legal grounds

3. Examination of Issues

(Issue 1) Whether item classification is appropriate

The product in question is composed of about 65% of normal butane and about 35% of isobutane and has the same molecular formula, but the shape of the carbon chain is different.･They are structural isomers with different physical and chemical properties. For item classification, the related notes and commentary of the tariff rate table are as follows.

- Table of Tariffs, Chapter 29, Note 1: (a) Chemically single organic compounds (regardless of whether or not they contain impurities). (B) Mixtures of two or more isomers of the same organic compound (regardless of whether or not they contain impurities. However, for saturated or unsaturated acyclic hydrocarbons, mixtures of isomers other than stereoisomers (Chapter 27) are excluded.

- Tariff Schedule Commentary No. 2711: (IV) Butane (limited to those with a purity of less than 95% of normal butane and isobutane, respectively) Products with a purity of 95% or more of normal butane or isobutane are classified in heading 2901.

According to Note 1 of Chapter 29 of the Tariff Schedule, it can be seen that the item at issue corresponding to structural isomers, not stereoisomers, are classified in Class 27. Also the commentary No. 2711 shows that the item at issue of normal butane and isobutane with a purity of less than 95 % are classified in Class 27.

In conclusion, in cases that butane gas is either ① butane, which is chemically a single organic compound, ②stereoisomer butane, which is a saturated acyclic hydrocarbon, which has the same molecular formula chemically, but differs only in the arrangement direction of the atoms constituting the molecule in dimensional space, or ③ butane, having a purity of 95% or more of each of normal butane and isobutane, it is classified in Class 29, and in other cases, it is classified in Class 27.

Therefore, as in the decision in this case, the claimant's disputed goods fall under structural isomers composed of about 65% normal butane and about 35% isobutane, so the goods at issue should be classified in Class 27.

(Issue 2 and 3) Whether the principle of good faith and non-retrospective taxation is violated and the notice of additional tax is unfair

- Over a period of 6 years from October, 1997 to August 2003, the claimant consistently exported as HSK 2901.10-1000, and based on this, it is confirmed by related data that claimant has received simple flat-rate refunds on 11 occasions from October 2002 to September 2003.

- On the other hand, as a result of checking the computer data held by the Korea Customs Service, it is shown that companies in the same category classified items into either HSK 2711.13-0000 or HSK 2901.10-1000 when exporting and importing the same kind of goods during the same period.

- In addition, in response to the petitioner's request for preliminary review of item classification for the item at issue, the Central Customs Analysis Center, an institution specializing in item classification, responded by classifying items as HSK 2901.10-1000 in the same manner as the item classification of the claimant.

- When judging this comprehensively, it would be difficult to say that there was unreasonableness for the claimant, a small and medium-sized business, to trust that receiving a simple flat-rate refund after exporting the item in question with the item classification number under HSK 2901.10-1000 as fair.

- Furthermore, the fact that the Central Customs Analysis Center replied that it was classified as HSK 2901.10-1000 in response to the claimant's request for preliminary review of item classification indicates that the export customs clearance and simplified fixed-amount refund based on this reply were justified.

- In addition, it is judged to be an unfair disposition that lacks the purpose of legal application in light of the purpose of the Customs Act and the Special Act Concerning the Refund of Customs Duty on Raw Materials for Export, etc. even though on September 1, 2003, it was notified that the item classification preliminary review notification was incorrect, and on November 7 of the same year the Commissioner of the Korea Customs Service has notified this change, the fact that a small and medium-sized business like the claimant faithfully cleared export customs and refunded it over a long period of time was denied and collected the refund retrospectively.

4. Decision: The disposition to collect the refund according to the trusted item classification is an unfair disposition that lacks the purpose

(Issue 1) Whether item classification is appropriate

The item at issueIt is a structural isomer composed of about 65% of normal butane and about 35% of isobutane and should be classified as HSK 2711.13-000.

(Issue 2 and 3) Whether the principle of good faith and non-retrospective taxation was violated and whether the notice of additional tax was unfair

Considering that the claimant and the company in the same industry have consistently made export declarations, and that the notice of decision based on the application for preliminary review of item classification was trusted, and that there is no cause attributable to the claimant for such trust, the notice to collect the additional refunds as retroactive taxation contrary to the principle of good faith is judged to be an unreasonable infringement of the claimant's property rights. Therefore, the refund notice should be canceled.

Global Customs Insight

Introduction to OECD Guidelines on Transfer Pricing in the COVID 19 Pandemic Situation – 4. Normal Price Calculation Method Pre Approval System

Since February 2020, the COVID-19 has hit the world, drastically changing our common senses and lifestyles as well as trade and customs. The OECD (Organization for Economic Co-operation and Development) collected the agreed views of 137 member countries. In the 'Transfer Pricing Guidelines in the ovid-19 Pandemic Situation (2020.12)', OECD explains the arm's length principle and application of the OECD Transfer Pricing Guidelines on specific facts and issues that may arise in the Covid-19 situation, and a comprehensive framework related to BEPS (Erosion of Tax Sources through Income Transfers). Even in the COVID-19 pandemic situation, in principle, the 2017 OECD Transfer Pricing Guidelines (OECD TPG) for multinational companies and tax authorities should be applied, and the following should be considered: **1) comparability analysis, 2) losses and the allocation of COVID-19 specific costs, 3) government assistance programs ,and 4) Arm's length price calculation method pre approval system** (**advance pricing agreements, "APA")** should be considered. Finally in this issue we would like to guide you on how to apply **Arm's length pricing method pre approval system** (**"APA").**

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Some taxpayers may have difficulty applying existing APAs in the economic situation of the COVID-19 pandemic. In these cases, taxpayers are encouraged to adopt a collaborative and transparent approach by raising these issues with the relevant tax authorities in a timely manner. Taxpayers should not attempt to settle matters without consultation with the relevant tax authorities.

Existing APAs and their terms shall be respected and maintained unless conditions arise that lead to cancellation or revision of the APA (e.g. important assumption violations). Taxpayers and tax authorities cannot automatically override or change the terms of an existing APA due to economic condition changes. In general, APAs explicitly describe what constitutes conditions of non-compliance or non-fulfillment of critical assumptions and the resulting

consequences. Domestic laws and procedural provisions may also impose consequences or obligations on taxpayers and the tax authorities affected. When determining the impact of the COVID-19 pandemic on existing APAs, taxpayers and tax authorities must consider everything.

In the event that an important assumption is not met, tax authorities and taxpayers should consider: 1) the terms of the APA; 2) agreements with the relevant tax authorities on how to deal with the failure; and 3) applicable national law or procedural provisions. In some cases, national laws or procedural rules may describe the consequences of failure to meet important assumptions or may prescribe procedures to be followed.

When the impact of a breach is insignificant, taxpayers and tax authorities may agree whether to continue applying the APA. In the case of bilateral or multilateral APAs, a common and useful practice is for tax authorities to consult before imposing a unilateral change.

1) Revision - Different conditions apply before and after the revision date, but taxpayers and tax authorities still have the benefit of the APA for the entire proposed period.

2) Cancellation - The APA is valid only on the date of cancellation, not the entire proposed period.
3) Revocation - treated as if the taxpayer had never joined the APA

If a critical assumption is not met, the taxpayer should notify the tax authority when a change has occurred or when the taxpayer becomes aware of the change. Also a prompt notice is encouraged to give the affected parties more time to reach agreement on amendments to the APA. In cases of violation of the important assumptions of the APA, taxpayers must collect relevant supporting documents and submit them to the tax authorities. Relevant documentary evidence includes, but is not limited to, the following:

1) A description of the narrowest taxpayer business segment tracked by management, covering the entities and transactions involved in the APA;
2) Projected and actual business segment profits for the fiscal year impacted by COVID-19 or for the fiscal year ending within the fiscal year;
3) Copies of proposed or implemented amendments to existing or new intercompany agreements between the controlled parties affecting the subject transaction;
4) A description of the expected impact of current economic conditions on agreed transfer pricing methods during the fiscal year affected by COVID-19 (whether it has caused changes in operations and/or risks and responsibilities, government actions or business disruptions; whether caused by other mechanisms, such as insurance, to mitigate the impact on the current economic situation to the party)
5) A detailed income statement, including a breakdown of cost of goods sold (COGS), SG&A and other non-interest expenses (including transactions subject to APA) for the fiscal year impacted by COVID-19(including Income from any exceptional operating expenses impacted by Covid-19 or government-funded programs and a description of their accounting treatment)
6) Information about the conduct of third parties
When tax authorities are involved, it is important that taxpayers provide timely, transparent, and all relevant information, which will help maintain a non-adversarial perception and environment essential to the success of APA negotiations.

*source:GUIDANCE ON THE TRANSFER PRICING IMPLICATIONS OF THE COVID-19 PANDEMIC © OECD 2020

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FTA and import/export practical business guide

Extension of Application Period for Customs Duty Refund on Raw Materials for Export

On Dec. 31, 2022, with the revision of the Special Act concerning the Refund of Customs Duty, etc. for Raw Materials for Export (Special Act on Customs Duty Refund), the protection of taxpayers' rights was expanded.

In order to protect the rights of taxpayers more broadly, **the refund application period for tariffs on raw materials for export was extended from 2 years to 5 years.** In the past, when a notice of customs investigation or a written notice on collection of refund amount was received, voluntary reporting was not allowed. Now **even when the notice is received, the voluntary report is possible.** This eased the burden on taxpayers.

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■ Extension of customs duty refund application period (related to Article 14, Paragraph 1 of the Refund Special Act)

Current	Amendment
□ Refund application period ㅇ2 years from the date the export declaration was accepted	□ Extension Period ㅇ 5 years from the date the export declaration was accepted

Customs Duty Refund Special Act[Enforced on January 1, 2023] [Law No. 19197, partially revised on December 31, 2022]

Article 14 (Request for refund) ① A person seeking a refund of customs duties, the refund application should be submitted **within 5 years from the date the goods are provided for export** to the customs office designated by the Commissioner of the Korea Customs Service per presidential decree. However, if there is a reason falling under any of the following subparagraphs for the amount of customs duties on raw materials for export provided for export, an application for refund may be made within 5 years from the date the reason arises. <Amended Dec. 31, 2011, Dec. 31, 2022>

1. Revision under Article 38-2 of the Customs Act
2. Amendment or correction under Article 38-3 of the Customs Act
3. Collection, voluntary reporting, and payment of the refund amount or excessive refund amount under Article 21;

A supplementary provision

Article 2 (Applicability to Refund Request Period)**The amended provisions of Article 14 (1) apply to refund applications for which the period for requesting refund of customs duties has not elapsed under the previous provisions at the time this Act enters into force.**

Considering that the statute of limitations for the right to claim refund under the previous「Customs Act」was 5 years, the statute of limitations for the right to claim refund was gradually extended from the previous 2 years to the current 5 years to protect the rights and interests of taxpayers. There was a discrepancy since the statute of limitations for the right to claim refund under the Customs Refund Special Act was 2 years.

With this revision, the right to claim refund under the Customs Act and the right to claim refund under the Customs Refund Special Act were equally applied for 5 years, and the equity between the nation's right to collect and the people's property rights was improved.

※ The amended provisions of Article 14 (1) apply even to refund applications for which the period for requesting refund of customs duties, etc. under the previous provisions has not elapsed at the time this Act entered into force. Cases that export declarations have been accepted after Jan. 1, 2021 may be eligible for an extension of the refund application deadline.

■ Abolition of grounds for prohibiting voluntarily reporting of excessive refunds (related to Article 21, Paragraph 4 of the Refund Special Act)

current	amendment
□ Prohibition of self-reporting of excessive refund ㅇ Prohibition -① Notice is made prior to the taxation. -② Notice of customs investigation is made. -③ When an investigation into a customs offender is initiated. ㅇ preferential interest rate on additional penalty for self-reporting (Enforcement Decree) -(Self report) 10/100,000 per day *<New exception> -(other than self-report) 39/ 100,000 per day	□ Period extension ㅇ <Delete> ㅇ In case of self-reporting under ①-③, Application of preferential interest rates on additional charges are excluded (Enforcement Decree) - (same as current) * (Exception) 39/100,000 per day in the case of voluntary reporting under ①-③ - (same as current) ㅇEffective Date: April 1, 2023

Customs Duty Refund Special Act[Enforced on January 1, 2023] [Law No. 19197, December 31, 2022, partially revised]

Article 21 (Collection of Excessive Refund, etc.)④ A person who has received a refund of customs duties, etc. or a person who has received a settlement notice pursuant to Article 7 (1) becomes aware of any fact falling under any subparagraph of paragraph (1) or if the customs duties, etc. to be paid are insufficiently settled after receiving a settlement notice, he/she may voluntarily report the fact to the head of the customs office and pay the refunded amount or excessive refunded amount or customs duties, etc., as prescribed by the Presidential Decree.

Supplementary Provision

Article 1 (Effective Date) This Act shall enter into force on January 1, 2023. However**, the amended provisions of Article 21 (4) shall take effect on April 1, 2023.**

Article 3 (Applicability to Voluntary Reporting of Excessive Refunds) The amended provisions of Article 21 (4) shall be applied from the person doing the self-reporting after the effective date of the amended provisions.

Under the Special Act on Customs Duty Refund, voluntary reporting is encouraged. The interest rate of the additional charge of 0.00039% per day (14.235% per annum) is applied in the case of an excessive refund, but if the person who has received a customs refund voluntarily reports, the interest rate of the penalty per day is 0.00010% (3.65% per annum).

Meanwhile, under the Special Act on Customs Refund before the revision, it is stipulated that self-reporting cannot be made when the head of the customs office has already ①notified the excessive refund amount prior to the taxation, ② notified the customs investigation, ③started the investigations on customs offenders, considering the fact that the meaning of self-reporting is partially lost. Even if the company admits excessive refunds, voluntary reporting was not possible when the pre-taxation notice or customs investigation notice was made, so it took a lot of time until the collection was decided. The burden of additional penalty for excessive refund was occurring.

From April 1, 2023 according to the revised law, in the case of self-reporting immediately after 'Notice of Customs Inspection', the company will not have to pay an additional fee for the period after the self-reporting, reducing the burden on the company. With the corresponding amendment, it is possible to voluntarily report excessive refunds even after notification of customs investigation. For this case,

regulations applying 39/100,000 per day, which is the interest rate of general additional charges when collecting excessive refund will be newly established in the enforcement ordinance of the Act on Special Cases on Customs Refund (The announcement of drafting is currently underway).

※ Voluntary declaration is possible after notification of customs investigation, but the previous general interest rate (0.00039% per day) is applied instead of the previous voluntary declaration rate (0.00010% per day).

Contents and Opinion of Customs Trade Revision

Partial revision of the 「Value-Added Tax Act」

1. Reasons for revision

The purpose is to strengthen the protection of taxpayers' rights and interests by expanding the reasons for issuance of corrected income tax invoices by converting the existing corrected income tax invoice from 'not issued in principle, issued as an exception' to 'issuance in principle, non-issuance as an exception'.

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[PROFILE]

- Shinhan Customs
- Corporate review And investigation
- Foreign exchange
- Trade transaction advisory

2. Major revisions

In the past, when the head of a customs office determines or corrects the tax base or tax amount, or when an importer files an amended return knowing in advance that the tax base or tax amount will be determined or corrected, an amended import tax invoice is issued only when there is no attributable cause to the importer. In the future, to promote the taxpayer's convenience, a revised income tax invoice will be issued in principle, except when the taxpayer is accused of customs duty evasion or has been notified.

3. Implementation date

Effective from January 1, 2023

4. Comments on revision

According to the law prior to the amendment, the grounds for issuance of corrected income tax invoices were very limited, and the burden of providing proof for ambiguous concepts such as 'mistake', 'minor negligence', and 'no fault' was imposed on the taxpayer. Thus the predictability the taxpayer can make was poor, and the possibility of disputes with tax authorities was high.

However, this revision is expected to broaden the range of taxpayer rights relief by deleting ambiguous and abstract requirements for issuance and adopting the method of 'issuance in principle, non-issuance by exception'. So for the case that is under tariff evaluation, if it is before the amended return, it will be possible to issue an amended income invoice to a wider extent in accordance with the amended Value Added Tax Act.

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