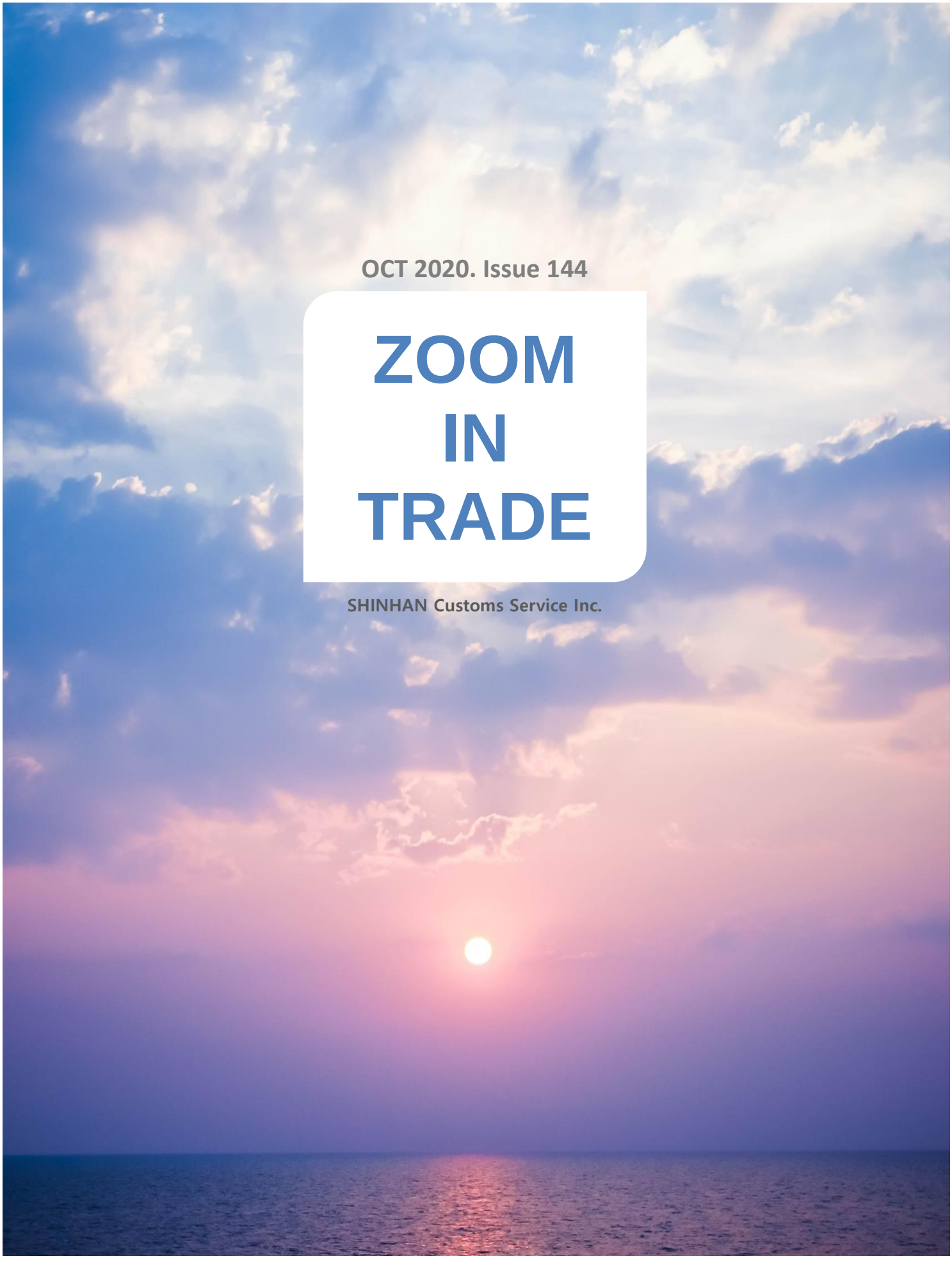

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Where Is Grace Chang?

King Sejong - 'With the People' Leadership

Grace Chang
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South Korea celebrated Hangul Day on October 9. For many in Korea, this day served as a much welcomed start to a long weekend. However, Hangul Day actually celebrates a pivotal accomplishment in the history of Korea, which was the development of Hangul – the "Script of Korea."

Hangul was created in the mid-15th century by King Sejong and the scholars of Jip-Hyun-Jeon, otherwise known as the Hall of Worthies. The creation of Hangul was borne out of King Sejong's recognition that the existing form of written communication, Hanja (Chinese characters), was too complicated and thus rendered those with limited access to education illiterate. King Sejong recognized that democratizing the language through a more simple, phonetic characters would allow the common people to better understand laws and to create opportunities.

The Cover Story for this month is 'Huawei Sanctions Status by the US and Reorganization of the semiconductor memory market'. FTA News covers 'India strengthens FTA origin management Effective from September 21', and Inside Vietnam reports 'Customs clearance procedures and tariffs when a processing company entrusts outsourcing processing'. In addition, the Updates in Customs and Trade Related Laws is 'Partial Revision of Operation Instructions on Safety Management of electrical and household goods', and the Customs Case Study is 'Whether the judgment made in criminal cases in accordance with the trial procedure can be considered as the reason for a late request for correction under Article 34-3 (3) of the Customs Act'.

King Sejong's accomplishments during his reign of 32 years went far beyond the Hangul writing system. He is also credited with expanding Korea's territory to the north and strengthening the south, all while maintaining stable relations with neighboring countries. Sejong also led a period of great scientific and technological advancement in Korea.

In the "Dictionary of History of Science and Technology" published in Japan, 21 out of 44 major achievements worldwide in the 15th century were developed in Korea.* Some of King Sejong's notable technological achievements include the astronomical calendar and the medical encyclopedia – developments, when combined with Hangul, gave much broader opportunity for his people. King Sejong's belief was based on a clear vision that 'Since the people are the foundation of a country, only when the foundation is strong can the country be peaceful.' Sejong, who believe that his people had been entrusted upon him by heaven, wanted to rule the nation together with his people.

In a time filled with tumult and uncertainty, the compassion of leaders is all the more important. French scholar Jacques Atali suggests 'altruism' as a solution to the COVID-19 crisis**. He says we should get out of the extreme egoism of self-centeredness. We must give up 'self-love' and instead embrace a heart for others through our words and actions. This kind of world worth living in is the world King Sejong dreamed of.

*Park Hyun-mo. 2014.『If Sejong 』. Midas Books

**Jacques Attali. Reporter Lee Min-jung. 2020.「'The World Changed by the Covid'」.

Cover Story

Huawei Sanctions Status by the US and Reorganization of the semiconductor memory market

Huawei sanctions in the US and domestic trends

Everyday, articles about the United States are pouring out, which will increase because of the upcoming November general election. Both parties are advocating for a policy to protect their own people and industries with votes in mind.

Huawei's sanctions by the United States are causing considerable waves in Korea. Huawei, the global smartphone manufacturer, has the highest market share second to Apple according to the 2019 statistics. Samsung Electronics and SK Hynix in Korea also trade with Huawei as semiconductor customers; Samsung Electronics has 3% of sales with Huawei and SK Hynix, 11%, which should not be considered lightly.

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US sanctions started in full scale last year. The first sanctions were announced in May 2019, and a year later in May 2020, the second sanctions were further strengthened. As of September 15, pre-approval from the US government must be obtained to export semiconductor materials, technologies, and software using US technologies to Huawei from outside the US. The U.S. government will not grant pre-approvals easily. Huawei's exit from the US market would be the ultimate goal.

For the domestic company SK Hynix, Huawei is an influential customer occupying 11% of sales. Samsung Electronics supplies semiconductors to Huawei and is also a competitor in the smart telecommunication equipment market with Huawei, so Samsung Electronics expects to expand the market through this. * As of August 2020, Samsung Electronics ranked No. 1 with 22%, Huawei 16% in smartphone market share (Market Research: Counterpoint Research, 9.29)

Recently, Samsung Electronics, SK Hynix, and Samsung Display all applied for pre-approval to the US government, but as of early October, no news has been heard.

Semiconductor market reorganization

Regarding the US sanctions, there will be a short-term decline in sales, but industry officials predict that the impact will not be significant in the long term. Even if Huawei is unable to make a smartphone, other competitors such as Oppo, Vivo, and Xiaomi will fill in. This will lead to an expansion of the production scale, and securing essential parts will soon become important.

Korean companies also need to aggressively enter the market to expand their global market share by improving their technological capabilities through active technology development and expansion of investment. The United States, which had invested only in semiconductor design technology in the past, is gradually pushing for policies to expand manufacturing facilities, realizing the limit of market expansion due to the lack of manufacturing facilities. The Trump administration has been pushing for semiconductor reshoring policy since the beginning.

Last year, Korea was perplexed by Japan's export restrictions on materials for semiconductor components. As the difficult market conditions continue, trade measures by each country to protect their own markets are becoming increasingly intensified. Sufficient preparation is required so that Korean companies do not suffer damage amid the complicated trade conflict between the United States and China, and various systematic support from government level is also needed.

FTA News

India strengthens FTA origin management Effective from September 21

Amendments to Customs Law in India

The Indian Government amended the Customs Act in April 2020 to implement the current trade agreements and to manage the relevant origins. In addition, on August 21, 2020, the Indian government announced that the Customs Administration of Rules of Origin under Trade Agreements Rules (CAROTAR 2020) will be strictly implemented from September 21st and in order to receive tariff benefits, additional documents need to be submitted to prove the country of origin for goods imported into India.

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Main Content

1. Intensifying importers' obligation for applying for preferential tariff rates

The importer must not only submit a certificate of origin for the application of preferential tariff rates, but also possess sufficient information on the fulfillment of the country of origin standards (including value-added ratio and item criteria) and submit data in the manner prescribed by the rules (FORM I). Reasonable attention should be paid to the accuracy and reliability of information. Indian export companies need to be prepared in advance because they may be asked for information on proof of origin from importers.

2. Strengthen the authority of officials in charge to verify the country of origin

The official in charge may request additional information based on reasonable suspicion of non-compliance with the criteria of the country of origin, and the importer must submit the required information within 10 business days. If the documents to prove the country of origin are insufficient or are not submitted within the deadline, the customs office has strengthened the authority of the official in charge to verify the country of origin according to the agreement or stop preferential treatment.

3. Establish standards for exclusion of preferential treatment without verification

Clear standards have been established for preferential treatment to be excluded without verification. They are: If the item is not under concession agreement, if the certificate of origin does not contain complete information about the item, if the certificate of origin has expired, if the certificate of origin is changed without approval from the issuing agency.

In addition, if the export goods are determined by the customs authorities of India as not meeting the criteria for determining the country of origin, preferential tariffs may be excluded without additional verification of origin for the same goods imported by the same exporter or manufacturer at the time of subsequent import, as well goods that were imported in the past.

FORM I component

Due to the tightened management of the country of origin by the customs authorities of India, importers must fill out and submit information for proof of origin in accordance with the format of FORM I in order to receive tariff benefits. The main component of FORM I is as follows.

① Section Ⅱ

- Fill out this section after submitting the import license.
- Importer name, document (import license) submission number and date, customs office that documents (import license) to be submitted
- Goods with tariff benefits

Serial Number	Item Name	HS Code

② Section Ⅲ Part A

- In the case of Section Ⅲ, information must be secured before importing goods.
- Briefly describe the criteria for determining the country of origin as to what processes were applied for the production of imported goods.
  Note*: (Example) * Wholly Obtained criteria (WO) * Value Added Criterion (Regional Value Contents) * Change in Tariff Classification (Change To Heading: change of 4 digits criteria, Change To SubHeading: change of 6 digits criteria, Change of Chapter: change of 2 digits criteria)
- Explain the process of the wholly obtained product since for a wholly obtained product, the conditions of each FTA are different.
- If it is not a wholly obtained (WO) product, fill in the following information.

Item Name	Production Process	Classification according to Origin Determination Criteria

③ Part B of Section Ⅲ

- If the product is not a wholly obtained product, fill in the following information for each material/part for each product according to the HS code. If no proof is provided, it will be treated as an offshore material.

Originating Materials/Raw Materials Explanation	Final Products are manufactured by the producer. (Yes/No)	Supply from the 3rd party in the region (Yes/No)	For the supply from 3rd party, compliance of the final product producers with the rules and documents proving the origin of the raw material of the relevant products provided (Yes/No)

(If originating region materials/raw materials are not used, write 'none'.)

- Additional Information

a.	Was the minimum criteria applied according to the origin criteria?	Yes/No 'If Yes, please describe the ratio or the amount of originating value added.
b.	Was the cumulative criteria applied in accordance to the origin criteria?	Yes/No If Yes, describe the method and scope of accumulation.
c.	Have indirect materials, intermediate goods and neutral factors been applied according to origin criterion?	Yes/No If Yes, explain the criteria used. Also state ingredients included.
d.	Was the inclusion ratio of regional value applied?	Yes/No If Yes, please complete the information below

		(1) Regional Value Ratio(%) (2) Elements corresponding to added Value (Example: material cost, profit, labor cost, overhead)
e.	Has the CTC criteria applied for compliance of the country of origin determination criteria	Yes/No If Yes, write the HS code for non-origin material.
f.	Have you applied for the process criterion?	Yes/No If yes, please describe the application criteria.
g.	Has the Certificate of origin been retroactively issued?	Yes/No If Yes, state the reason.
h.	Is it sent directly from the country of origin?	Yes/No If No, has it been confirmed according to the provisions of the FTA? How was it confirmed if this product meets the requirements of direct transportation?

Implication

The FORM I that the Indian importer needs to submit to apply for the preferential tariff includes not only basic information about the importer, but also information on the imported goods and supporting information on meeting the criteria for determining the origin of goods subject to preferential treatment (regional value ratio, item-specific origin criteria, etc.). Since these contents may contain information related to the trade secret of the exporting company, a smooth exchange of information might be difficult. Therefore, both exporters and importers will need to discuss the list as well as the scope of information to be provided.

In addition, because of the tightened management system of Indian customs authority for the country of origin, exporters may receive requests for information from importers immediately. The exporters that export to India frequently will need to be aware of the changes as well as forms that have been officially announced, and be prepared to respond quickly to the requested information by the importers.

Inside Vietnam

Customs clearance procedures and tariffs when a processing company entrusts outsourcing processing

Vietnam's processing export companies that have signed processing contracts with a foreign trader before import, as well as the companies that have registered items with processing contracts and raw materials that are scheduled to be imported, may be deferred from customs duties and VAT upon import. However, the processing company is obligated to report liquidation on the details used for manufacturing of goods for export that use imported raw materials that have been deferred from customs duties. Customs duties are considered as exempt only after these procedures have been completed.

A processing company may entrust some outsourced processing for the production of export goods. Processing companies need to be aware that customs clearance procedures and payment of customs duties are different when the company provides raw materials for outsourced processing and the processed goods that are received from the outsourcing processing company depending on whether the outsourcing company is EPE or NON-EPE.

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I. Customs procedures

1. When outsourced processing is entrusted to EPE

The processing companies are obligated to declare import and export, but EPE is not obligated to declare import and export.

2. When outsourced processing is entrusted to Non-EPE

Neither the processing company nor the outsourced processing company are obligated to report import or export.

* In both cases, prior to delivery of raw materials to the outsourced processing company, the company name, the address of the head office, the address of the in-house manufacturing facility and outsourced processing company, and the time of the delivery of the raw materials to the outsourced processing company must be reported in writing to the customs authorities.

※ Related basis: circular 38/2015/TT-BTC Article 62 (2), Article 76 (2)

II. Customs

1. When providing raw materials for outsourced processing

1) Outsourced processing is entrusted to EPE

Export tariffs are exempt, but export tariffs are imposed if the raw material is a natural resource that meets the conditions of Article 11, Paragraph 1 of the Enforcement Decree 134/2016/ND-CP of the Export and Import Tax Act.

2) Outsourced processing is entrusted to Non-EPE

Exemption from export tariffs (subject to no export declaration)

※ Related basis: Article 16, Paragraph 6 of the Export-Import Tax Act 107/2016/QH13, Enforcement Decree 134/2016/ND-CP, Article 11 Paragraph 1 of the Import and Export Tax Act

2. When receiving outsourced goods

1) Outsourced processing is entrusted to EPE

The processing enterprise is required to pay import duties, and the taxable price is as follows.

→ When EPE does not use raw materials and parts imported from abroad (This means all raw materials constituting the processed product are supplied to EPE by the processing company.), and the processing company imports processed goods, the taxable price is only for the processing cost.

→ When EPE uses raw materials and parts imported from overseas, the taxable price is for the sum of the price of raw materials imported from overseas for EPE's processing plus processing costs.

2) Outsourced processing is entrusted to Non-EPE

Not subject to import duties (not subject to import customs clearance)

※ Related Basis: Enforcement Rule 39/2015/TT-BTC Article 17, Paragraph 3, Official Letter on Customs Procedures for Imported and Exported Goods No. 3018/TCHQ-TXNK (2020.5.11), No. 5864/TCHQ-TXNK(2020.9.4)

※ This information is constructed and rearranged by SHINHAN Customs Vietnam Co., Ltd. based on a released letter from Vietnam and has no legal effect.

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Customs Trade Related Law Changes

Partial Revision of Operation Instructions on Safety Management of electrical and household goods

Reason for revision

In the operation of the electrical appliance safety management system, the relevant regulations are supplemented for matters where procedures and methods are not clear and revised to promote efficiency of the safety management through consistency of the legal system according to the revision of the enforcement regulations and loosening of the regulation applications of labeling matters.

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Major revisions

A. Regulations on the verification procedure for goods verified by the head of customs office for electrical appliances (Article 12 (3), 12 (4))

B. Derivative model registration and clarification of the certification change procedure according to major parts change (Article 19 (1), 22 (1))

C. Regulations on the procedure for applying for a change in safety certification body by manufacturers or importers (Article 21)

D. Relaxation of regulations on labeling of single batteries (Article 59 (2))
- All safety certification marks had to be marked on the single battery products, but the regulations have been relaxed so all the labeling items can be marked on the surface of the packaging except for the model name.

*(Current) Safety certification mark, certification number, model name, manufacturer name, etc.-----> (Revised) model name

E. Adjustment of the safety management level according to the revision of the enforcement regulations (Attachment 1, Attachment 20)
- The level of safety management of power tools is lowered from the subject of safety certification to the subject of safety confirmation.

F. Matching of safety standard on labeling items and model classification (Attachment 9, Attachment 10, Attachment 11)

G. Relaxation of Self-test cycle (Attachment 19)
- The current periodic inspection cycle is stipulated once every two years, so the existing once every three-months or once-a-year self-inspection cycle has been reduced to once every two years and the minimum inspection cycle has been deleted.

H. Changes in particular standards for model classification of LED lighting system (Attachment 1, Attachment 9, Attachment 20)

- Designation of the capacity range subject to safety management and embodiment of particular standards, deletion of waterproof protection grade and model classification, and establishment of driving device model classification
- Deletion of important parts items (relay, code set) from the safety management parts list

Customs Case

Whether the judgment made in criminal cases in accordance with the trial procedure can be considered as the reason for a late request for correction under Article 34-3 (3) of the Customs Act

[Supreme Court's verdict on Jan. 9, 2020, judgment case 61888, 2018]

Background

A. The plaintiff ran an online shopping mall while staying in London, UK, from which the plaintiff shipped the items that Korean consumers ordered. From 2009 to 2012, for the goods delivered a total of 12,140 times, the plaintiff filed an import declaration as domestic consumers were liable for tax payment and that they were subject to reduction or exemption of small goods under Article 94, No. 4 of the Customs Act.

B. On November 19, 2012, the defendant imposed the plaintiff the customs duty OOO won, value added tax OOO won, underreported additional tax (tariff), and underreported additional tax (inland duty) on the grounds that the plaintiff was found to have violated the customs law while importing goods from the UK during the above taxable period (hereinafter collectively referred to as 'originally imposed disposition').

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C. Meanwhile, on April 12, 2012, the district attorney at the Daegu Prosecutor's Office charged the plaintiff for violation of the Customs Act for an indictment that the plaintiff imported goods that were subject to customs duties and sold them to domestic residents, but the goods were declared to the customs office as if the domestic residents were importing goods for their own use, and the customs duties on the goods were reduced.

D. In response to this, the first trial found the plaintiff guilty of the above indictment on February 11, 2015 and sentenced the plaintiff to a fine of OOO won. However, the appeal trial on January 19, 2017 considered the actual owner who imported the goods in this case was not the defendant, but domestic consumers. The plaintiff was found not guilty, and when the Supreme Court dismissed the prosecutor's appeal on May 31, 2017, the verdict of not guilty was confirmed as it was (hereinafter referred to as 'related criminal judgment').

E. On July, 18, 2017, the plaintiff requested for the correction on the original disposition of tax imposed. The plaintiff claimed that it is the case that the plaintiff became aware that the tax was paid in excessive amounts because the transaction or trade which was the basis for calculating the tax amount was determined differently by the judgment on the lawsuit. However, on July 19, 2017, the defendant refused to accept the claim on the grounds that the reason for the above allegation does not fall under Article 38-3 (2) or (3) of the Customs Act (hereinafter referred to as 'disposition of this case').

Plaintiff and defendant's allegation (Quoted from Daegu High Court Judgement on case3111, 2018.10.19.)

Plaintiff claim

In this case, the defendant initially imposed the tax on the premise that the plaintiff is responsible to pay customs duties for the imported goods, and there has been a criminal charge that the plaintiff got the reduced tariff in an unjust way when the plaintiff was responsible for paying customs duties for the imported goods. However, the criminal judgment of this case recognized that the person liable to pay customs duties for the imported goods was not the plaintiff, but a domestic consumer who imported goods, and for this reason, the plaintiff was acquitted. Therefore, the verdict of this criminal judgment corresponds with the later occurring rectification reasons which are specified in Article 38-3 (3) of the Customs Act and Article 34 (2) 1 of the Customs Act Enforcement Decree, that is 'the case in which the transaction or trade which was the basis for the calculation of the tax base and the amount in the initial report was determined differently by the judgment on the lawsuit.' Nevertheless, the defendant rejected the plaintiff's rectification claim on the ground that the reasons for plaintiff's claim for rectification corresponds with the reasons under Article 38-3 (3) of the Customs Act. The disposition in this case is illegal.

Defendant claim

The 'judgment' as the grounds for later occurring rectification stipulated in Article 38-3 (3) of the Customs Act and Article 34 (2) 1 of the Enforcement Decree of the Customs Act does not apply to the judgment in criminal cases. And even if the judgment includes a criminal judgment, this case does not apply to the case where the transaction or activity that became the basis of the tax amount in the initial report or correction on the import of the goods was determined differently by the judgment of lawsuit. Therefore, it is legal to dispose of the case in which the plaintiff's claim for rectification was rejected as the reason for the later occurring correction of the relevant criminal judgment

Hearing and judgment

Even if the judgment is finalized based on the determination of the existence or scope of tax payment duty during criminal case proceedings, it cannot be regarded as 'in case the transaction or trade, which

was the basis for taxation criteria and calculating the tax amount in the initial report or correction, is determined to have other contents by a judgment on the lawsuit.' (Refer to the judgment for specific reasons.) as stated in Article 38-3, item 3 of the Customs Act and Article 34, item 2-1 of the Customs Act Enforcement Decree unless there are special circumstances.

The significance of the judgment

On December 31, 2011, in the revised customs law, a system for requesting corrections according to reasons occurred later was introduced. This is to expand the remedy for the taxpayer's rights by allowing the taxpayer to prove their reasons and request a reduction in case of changes on the basis for calculating the amount of tax due to the occurrence of certain reasons after the tax duty is established.

In Article 34 (2) 1 of the Enforcement Decree of the Customs Act, in the initial report or correction, a transaction or trade was the basis for calculating the tax and it was presented as the reason for the late correction request. However, since the Customs Act did not present the specific meaning or scope of the judgment on litigation and the controversy over the scope of the judgment has been raised continuously. The Supreme Court's ruling is meaningful in that it concluded that the criminal case judgment could not be considered that 'the existence or absence of a transaction or activity which was the basis for calculating the tax and the amount of tax in the initial report or correction, or the legal effect are not confirmed as in different content '.

According to the cumulative Korean precedents regarding the late correction of domestic taxes and customs, the reasons for approval of late corrections tend to be interpreted too strictly, so there has been criticism among experts and civilians that the intention of the remedy of taxpayers' rights is not fully reflected in the application of the system.

Taxpayers considering a late correction request should fully refer to the cumulative precedents on the grounds for accepting late correction requests and review the legality of the request. In addition, the legislature will need to expand the remedy for taxpayers' rights and supplement the late correctional claim system in the direction of reducing the burden on the customs office.

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