

Client Advisory

May 2001

Court Decision Gives New Life to Challenge of HMT on Imports

A recent case decided by the U.S. Court of Appeals for the Federal Circuit (CAFC) permits an importer to challenge the Harbor Maintenance Taxes (HMT) paid on *imports* even though it did not file a protest with U.S. Customs. See *Thomson Consumer Electronics v. United States*, ___ F.3d ___, Case No. 00-1091 (Fed. Cir. April 18, 2001). Previously, in March 1998, the U.S. Supreme Court ruled that the HMT imposed on *exports* violated the Export Clause and was unconstitutional.

In 1995, Thomson Consumer Electronics (Thomson) filed suit against Customs at the U.S. Court of International Trade (CIT) asserting that the HMT assessed on its imports violated various provisions of the U.S. Constitution. An importer normally must file a protest within 90 days of Customs' liquidation of an entry and receive a denial of the protest prior to filing suit in the CIT. Thomson, however, did not file any protests. The CIT dismissed Thomson's lawsuit because the HMT payments on imports were subject to liquidations and Thomson did not file a protest. See *Thomson Consumer Electronics v. United States*, 62 F. Supp. 2d 1182 (Ct. Int'l Trade 1999). By dismissing Thomson's case because it did not protest the HMT, the CIT did not consider the merits of Thomson's arguments concerning the constitutionality of the HMT.

On appeal, the CAFC held that Customs simply collects the HMT and that requiring an importer to file a protest would be futile as Customs has no power to determine the constitutionality of the HMT. As a result of the CAFC's decision, Thomson may proceed with its challenge of the HMT at the CIT.

Although the CAFC has rejected a prior constitutional challenge to the HMT collected on imports in *Amoco Corp. v. United States*, 234 F.3d 1374 (Fed. Cir. 2000), Thomson has raised different constitutional arguments. Thomson's case represents an opportunity for other importers to file a suit challenging the HMT paid on imports without filing a protest with Customs to claim a refund. While we believe that Thomson's chances of prevailing are no more than 50%, we recommend that importers consider filing suit at the CIT in order to protect their right to a refund of the HMT paid on imports if Thomson is successful in its claim that the HMT is unconstitutional.

If you are interested in preserving your company's right to a refund, please contact us about the costs and fees for filing a summons and complaint with the CIT.

Customs and International Trade Practice

Myron P. Barlow, Attorney
202 625 3568
myron.barlow@kmzr.com

David M. Dunbar, Partner
312 902 5315
david.dunbar@kmzr.com

Patricia M. Hanson, Partner
312 902 5496
patricia.hanson@kmzr.com

Tammie G. Krauskopf, Attorney
312 902 5228
tammie.krauskopf@kmzr.com

Kathleen M. Murphy, Co-Chair
312 902 5364
kathleen.murphy@kmzr.com

Michael E. Roll, Partner
312 902 5581
michael.roll@kmzr.com

Marianne Rowden, Attorney
312 902 5416
marianne.rowden@kmzr.com

James L. Sawyer, Partner
312 902 5670
james.sawyer@kmzr.com

David R. Stepp, Partner
310 788 4637
david.stepp@kmzr.com

Mark S. Zolno, Co-Chair
312 902 5436
mark.zolno@kmzr.com

Therese Ignich, L.C.B., Paralegal
312 577 8188
therese.ignich@kmzr.com

Craig A. Unruh, L.C.B., Paralegal
312 577 8550
craig.unruh@kmzr.com

Global Trade Advisory Group

(a Division of KMZ Rosenman)

Peter J. Battaglioli,
Customs Audit Specialist
202 625 3788
peter.battaglioli@kmzr.com

Donald P. Luther, Trade Specialist
202 625 3617
donald.luther@kmzr.com

Carolyn DeCuir Palanca,
Trade Specialist
312 577 8009
carolyn.palanca@kmzr.com

Robert J. Pisani, Director
202 625 3556
robert.pisani@kmzr.com

*For further information please contact any of the members of
KMZ Rosenman's Customs and International Trade
Practice or Global Trade Advisory Group.*

*Published for clients as a source of information about current developments in the law. The material contained herein is not to be construed as legal advice or opinion.
© 2002 Katten Muchin Zavis Rosenman. All rights reserved. Katten Muchin Zavis Rosenman is a Law Partnership including Professional Corporations.*

KMZ Rosenman
KATTEN MUCHIN ZAVIS ROSENMAN

www.kmzr.com

525 West Monroe Street
Suite 1600
Chicago, IL 60661-3693
Tel 312.902.5200
Fax 312.902.1061

575 Madison Avenue
New York, NY 10022-2585
Tel 212.940.8800
Fax 212.940.8776

2029 Century Park East
Suite 2600
Los Angeles, CA 90067-3012
Tel 310.788.4400
Fax 310.788.4471

1025 Thomas Jefferson St., N.W.
East Lobby, Suite 700
Washington, DC 20007-5201
Tel 202.625.3500
Fax 202.298.7570

401 South Tryon Street
Suite 2600
Charlotte, NC 28202-1935
Tel 704.444.2000
Fax 704.444.2050

260 Sheridan Avenue
Suite 450
Palo Alto, CA 94306-2047
Tel 650.330.3652
Fax 650.321.4746

One Gateway Center
Suite 2600
Newark, NJ 07102-5397
Tel 973.645.0572
Fax 973.645.0573