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What is it with CBP and Christmas?

BIG DUTY INCREASE ON CHRISTMAS BOXES

In the July 1 Customs Bulletin, U.S. Customs & Border Protection (CBP) announced the intention to revoke a 2007 ruling on boxes that hold Christmas ornaments. The 2007 ruling directed that the boxes be classified under Chapter 48 of the HTS as paper goods, dutiable at 3.9%.

The proposed classification is "somewhere under heading 4202, depending on the outer surface of the box." That means the duty rate could be as high as 20%. MERRY CHRISTMAS? I don't think so.

COMMENTS DUE BY 7/31

If this affects your business, CBP is accepting comments until July 31. Among the services my firm provides is the filing of comments in ruling revocation proceedings, so we can help if you need us.

SCROOGE's Legacy

The fight to save Christmas goes back to the *Midwest of Cannon Falls* cases in the 1990s where our retired partner Joel Simon enjoyed multiple successes in the Court of International Trade and the Court of Appeals establishing classification in Chapter 95 for items associated with Christmas and other Festive occasions as opposed to classification according to constituent materials and higher Customs duties. Nutcrackers and Santa Claus will forever be grateful. But ONLY three-dimensional Santas!

There followed cases such as *Michael Simon*, *Wilton*, *Park B. Smith*, *Russ Berrie (Jewelry)*, *Russ Berrie (Trolls)* and *Waterford Wedgwood*.

In February 2007, under the guise of compliance with WCO obligations, utilitarian Christmas and festive items were banned from classification in Chapter 95. A footnote to the Chapter 95 note 1(v) directed importers of *certain* utilitarian Christmas/festive items to two duty-free provisions in 9817.95.

In the eight years since the inception of 9817.95.01 and 9817.95.05, the courts have not said what these provisions mean:

Articles classifiable in subheadings 3924.10, 3926.90, 6307.90, 6911.10, 6912.00, 7013.22, 7013.28, 7013.41, 7013.49, 9405.20, 9405.40 or 9405.50, the foregoing meeting the descriptions set forth below:

9817.95.01 :Utilitarian articles of a kind used in the home in the performance of specific religious or cultural ritual celebrations for religious or cultural holidays, or religious festive occasions, such as Seder plates, blessing cups, menorahs or kinaras.....Duty-free

9817.95.05: Utilitarian articles in the form of a three-dimensional representation of a symbol or motif clearly associated with a specific holiday in the United States.....Duty-free

An obvious difference is that one provision deals with three-dimensional items and the other does not. Another difference is that 9817.95.01 may not be able to withstand scrutiny under the Establishment Clause of the Constitution, unless it is read broadly.

Stay tuned--Simon Gluck & Kane has the interpretation of 9817.95.01 and .05 in a case before the U.S. Court of International Trade as you read this!

SIMON GLUCK & KANE LLP



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