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Fed. Circ. Affirms Atty Fees For White Sauce Importer

By **Fola Akinnibi**

Law360, New York (December 15, 2016, 7:15 PM EST) -- The Federal Circuit affirmed a U.S. Court of International Trade decision to award attorney fees to an importer of white sauce on Thursday, ending its fight with U.S. Customs and Border Protection over \$28 million in tariffs applied to its imports because of the agency's reclassification of the product.

A three-judge panel found that the CIT properly determined, under the Equal Access to Justice Act, that the U.S. government was not substantially justified in its decision to reclassify International Custom Products Inc.'s sauce as a dairy spread after the agency discovered it was being used to make cheese. That decision ultimately sent white sauce duties skyrocketing by 2,400 percent and put ICP out of business.

The panel sided with the CIT in its finding that Customs flouted normal protocol for reclassifying products and instead revoked a ruling letter that classified white sauce as a "sauce and preparation therefor" without proper notice.

"Customs was aware that notice and comment was required but, despite the legal ramifications, deliberately decided to [forgo] it," the opinion said.

ICP's attorney Gregory H. Teufel of OGC Law LLC told Law360 on Thursday that the ruling means the company can now think about repaying the expense it was forced to incur due to the government's attempts to impose the duty.

"ICP is very pleased with the outcome, it's been a long hard road for them and they were certainly entitled to attorney fees," Teufel said.

The dispute between the pair dates back to 1999, when ICP asked Customs to clarify its classification of white sauce imports. The agency said it considered the product to fall under "sauces and preparations therefor," which are subject to a 6.6 percent tariff upon entering into the U.S.

But upon discovering that ICP's biggest customer, Schreiber Foods Inc., was using the sauce to make cheese, Customs in 2005 said it would reclassify the sauce imports as a dairy spread, which carried a much heftier tariff.

A long fight in the CIT and the Federal Circuit followed. The appeals court denied ICP's challenge in 2006 because the company had not exhausted its potential remedies. After another round of litigation at the CIT, the Federal Circuit in 2014 determined that Customs **shouldn't have made the change** without consulting with the company.

In June, the U.S. Supreme Court **refused to take on ICP's challenge** of a Customs rule requiring full payment of import duties before bringing legal actions.

ICP is represented by Gregory H. Teufel of OGC Law LLC.

The government is represented by Claudia Burke, Benjamin Mizer, Jeanne Davidson, Amy Rubin, Edward Francis Kenny and Yelena Slepak of the U.S. Department of Justice.

The case is International Custom Products Inc. v. U.S., case number 2016-1024, in the U.S. Court of Appeals for the Federal Circuit.

--Additional reporting by Bryan Koenig, Alex Lawson and Matt Sharp. Editing by Brian Baresch.

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