

REC/NON

COMMISSION DECISION

of 16.12.1992

finding that it is justified not to proceed with the recovery of import duties in a particular case

(request submitted by Italy)

REC 6/92

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties⁽¹⁾, as last amended by Regulation (EEC) No 918/83⁽²⁾,

Having regard to Commission Regulation (EEC) No 2380/89 of 2 August 1989 laying down provisions for the implementation of Article 5(2) of Council Regulation (EEC) No 1697/79 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties⁽³⁾, and in particular Article 6,

Whereas, by letter dated 16 November 1992 received by the Commission on 1 December 1992, Italy requested the Commission to decide, pursuant to Article 5(2) of Regulation (EEC) No 1697/79, whether the non-recovery of import duties was justified in the following circumstances :

(1) OJ No L 197, 3.8.1979, p. 1

(2) OJ No L 105, 23.4.1983, p. 1

(3) OJ No L 225, 3.8.1989, p. 30

Between 1 January and 2 March 1988, a number of Italian firms imported wild mushrooms of the genus "muscaria comusum" originating in Morocco and Tunisia.

The onions were classified under Combined Nomenclature (CN) Code 07 03, for which 12% customs duty was payable, and released for free circulation. However, they should have been classified under CN Code 0709 at 16% duty.

The importers' classification was accepted by Italian customs on the basis of the customary national tariff which contained erroneous information on the products concerned, an error which itself arose from erroneous information contained in the integrated Community Tariff (TARIC).

Although the TARIC databank was corrected on 11 November 1987 and the relevant information was circulated to all Member States at the beginning of December 1987, the Italian customs offices were only informed of the correction by their Headquarters on 1 March 1988.

Whereas, in accordance with Article 5(2) of Regulation (EEC) No 1697/79, competent authorities may not proceed to the post-clearance collection of import or export duties not collected as a result of a mistake by the competent authorities themselves and which could not reasonably have been detected by the person liable, such person having acted in good faith and observed all the requirements of the rules in force applicable to his customs declaration;

Whereas Article 4 of Regulation 2164/91 provides that the competent authority of the Member State where the error was committed shall transmit the case to the Commission where it considers that the conditions laid down in Article 5 (2) of Regulation (EEC) No 1697/79 are fulfilled or is in doubt as to the precise scope of the criteria of that Article with regard to the case concerned, irrespective of the amount involved;

Whereas, in accordance with Article 6 of Regulation (EEC) No 2164/91, a group of experts composed of representatives of all the Member States met on 25 March 1993 within the framework of the Committee on Duty-Free Arrangements to examine the case in question;

Whereas before 1 January 1988 wild onions of the genus "muscari comusum" were classified under CCT heading 07 01 H, subject to 12% duty;

Whereas the Combined Nomenclature was adopted by Council Regulation (EEC) No 2658/87 of 23 July 1987 which was properly published in the Official Journal of the European Communities No L 256 of 7 September 1987; whereas this nomenclature applied from 1 January 1988; whereas application of the provisions leads to the classification of wild onions of the genus "Muscari comusum" under CN Code 0709;

Whereas in order to facilitate the application of this nomenclature the Commission issued various correspondence tables and tables for the transposition of CCT headings into the new Combined Nomenclature headings; whereas these showed that CCT heading 07 01 H corresponded to CN Code 07 03 10;

Whereas the information initially provided by the TARIC was corrected and correctly presented before the entry into force of the Combined Nomenclature on 1 January 1988;

Whereas however the transposition of the Harmonised System to the Combined Nomenclature presented some difficulties; whereas therefore it appears that the tariff situation on the basis of the information published in the Official Journal of the European Communities was unclear;

Whereas it cannot therefore be considered that the error committed by the Italian authorities could reasonably have been detected by the importers when the declarations for release for free circulation were made;

Whereas the importers acted in good faith and observed all the provisions laid down by the rules in force concerning their customs declarations;

Whereas it is therefore not justified to proceed to the post-clearance recovery of the import duties in this case;

HAS ADOPTED THIS DECISION :

Article 1

The import duties of LIT [REDACTED] the subject matter of the request by Italy received by the Commission on 1 December 1992 shall not be recovered.

Article 2

This Decision is addressed to Italy.

Done at Brussels, 1.6.1993

For the Commission