

COMMISSION DECISION

of 6-10-1994

finding that a request for the remission of import duties in a

particular case is inadmissible

(Request submitted by Germany)

REM 11/94

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code,¹

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92,² and in particular Article 907 thereof,

Whereas by letter dated 22 March 1994, received by the Commission on 6 April 1994, Germany asked the Commission to decide, under Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,³ as last amended by Regulation (EEC) No 3069/86,⁴ whether the repayment of import duties is justified in the following circumstances:

¹ OJ No L 302, 19.10.1992, p.1.

² OJ No L 253, 11.10.1993, p.1.

³ OJ No L 175, 12.7.1979, p.1.

⁴ OJ No L 286, 9.10.1986, p.1.

During the period from 6 January 1993 to 27 January 1993, a German firm imported wine from the Former Yugoslav Republic of Macedonia on which reduced import duties were payable if the reference price was observed. Before importing the wine, the firm had made oral enquiries at the main customs office with local responsibility regarding the reference price for the wine concerned, in order to determine the price at which the wine was to be sold by the Macedonian supplier. It was agreed that the wine would be supplied at a price of DM 95 per hundred litres, which was above the reference price of DM 94.66 per hundred litres communicated by the main customs office. When the wine was cleared, duties were paid at the reduced rate of ECU 2.4:HI.

The quota for the Former Yugoslav Republic of Macedonia was changed by Regulation (EEC) No 3953/92 of 21 December 1992, published in OJ No L 406 of 31 December 1992, with the result that the reference price became DM 100.31 per hundred litres. The Regulation came into force on the day following its publication and was applicable from 1 January 1993 (Article 11). Since, in view of this increase, the reference price for the imports in question had not been respected, the customs authorities took steps to effect the post-clearance recovery of the import duties, totalling XXXXX.

The firm is applying for remission of the duties claimed retrospectively on the grounds that the shortfall in duties was the result of an error on the part of the German customs authorities, of which it could not have been aware, since the relevant Official Journal was not available for consultation in Luxembourg until after clearance of the imports in question. It adduces evidence of this in the form of a statement from the Office for Official Publications of the European Communities of 12 August 1993 certifying that the relevant Official Journal was not available for consultation in Luxembourg until 16.40 on 29 January 1993.

Whereas, in accordance with Article 907 of Commission Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 4 July 1994 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayments) to consider the case;

Whereas in accordance with Article 13(1) of Regulation (EEC) No 1430/79, import duties may be repaid or remitted in special situations, other than those laid down in sections A to D of that Regulation, resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned;

Whereas OJ No L 406 of 31 December 1992 containing Regulation (EEC) No 3953/92 of 21 December 1992 was not available for consultation in Luxembourg until 29 January 1993;

Whereas according to a fundamental principle of the Community legal system, a measure taken by a public authority cannot be relied on as against those to whom it applies until the latter are able to acquaint themselves with it;

Whereas Regulation (EEC) No 3953/92 was not, in fact, available for consultation until 29 January 1993 and, consequently, did not have effect at the time when the goods in question were imported;

Whereas, therefore, no customs debt arose at the time of importation of the goods;

Whereas Article 2(1) of Regulation (EEC) No 1430/79 stipulates that import duties shall be repaid or remitted in so far as the competent authorities are satisfied that the amount of such duties entered in the accounts relates to goods in respect of which a customs debt has not arisen;

Whereas under these circumstances the German authorities can effect remission of the duty themselves;

Whereas under these circumstances the request for the remission of import duties totalling XXXXXX, cannot be considered under the terms of Article 13 of Regulation (EEC) No 1430/79;

HAS ADOPTED THIS DECISION:

Article 1

The request for the remission of import duties submitted by Germany on 22 March 1994 is inadmissible.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 6-11-1994

For the Commission