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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11-4-2003
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Not for publication

COMMISSION DECISION

of 11-4-2003

finding that the remission of import duties in a particular case is justified

(Only the Dutch text is authentic.)

(request submitted by the Netherlands)

REM 04/2003

FR

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REM 04/2003

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 as last amended by Regulation (EC) No 2700/2000,²

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 444/2002, and in particular Article 907 thereof,⁴

¹ OJ L 302, 19.10.1992, p. 1.

² OJ L 311, 12.12.2000, p. 17.

³ OJ L 253, 11.10.1993, p. 1.

⁴ OJ L 68, 12.3.2002, p. 11.

Whereas:

- (1) By letter dated 20 January 2003, received by the Commission on 21 January 2003, the Netherlands asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the remission of import duties was justified in the following circumstances.
- (2) A Dutch customs agent (hereinafter the "applicant"), acting for various importers, including company A, the client in this case, submitted declarations for the release of linear rails into free circulation. According to the dossier sent by the Dutch authorities, these rails are part of a linear motion system with one or more compartments designed to transport instruments and tools to a precisely determined place.
- (3) The declarations of release for free circulation concerned were made by the applicant on behalf of the client. The goods were declared as parts or accessories for machines for working metal and classified under CN heading 8466.
- (4) As a result of an investigation arising from a complaint, the competent customs authorities at Schiphol Airport found, in 1989, that the goods should have been classified under CN heading 8428 as apparatus for handling goods. A ruling was adopted on this matter and the client notified thereof.
- (5) From then on the client asked the applicant to use the classification agreed by the Schiphol customs authorities when clearing goods within the customs jurisdiction of the authority which had issued the ruling and in other customs districts in the Netherlands (including Rotterdam district).
- (6) When the client was subsequently given a licence to run a type E customs warehouse, the classification of the goods concerned was reviewed but the classification under heading 8428 was not contested. The client therefore asked the applicant to carry on declaring the goods under heading 8428.

- (7) Moreover, as the Dutch authorities point out in their letter of 20 January 2003, the classification under heading 8428 was checked and approved several times by the competent customs authorities.
- (8) In September 1999, the German customs authorities carried out a check at the premises of the client's German subsidiary on goods declared for import into Germany and the Netherlands. One purpose of the inspection was to check the classification of linear motion systems. The German authorities concluded that goods of this type should be classified as ball bearings under CN heading 8482.
- (9) Following the inspection by German customs, on 4 January 2000 samples of three linear motion systems were taken by the Dutch customs authorities at the client's warehouse in the Netherlands. On the basis of their investigation, the Dutch authorities decided that the goods concerned should actually be classified under heading 8482, the heading agreed by the German authorities at their 1999 inspection. As the rate of customs duty for heading 8482 was higher than for heading 8428, the one used by the applicant since the Dutch administration's classification ruling in 1989, the competent Dutch authorities accordingly requested post-clearance payment by the applicant of the difference in customs duties owed on the goods released for free circulation in the years 1997 to 1999. The duties total XXXXXX and it is that amount for which the applicant is now requesting remission.
- (10) As the Dutch authorities state in their letter of 20 January 2003, the applicant justifies its request on the grounds that, since 1989, the goods concerned had been classified in the declarations under CN heading 8428, that classification had been approved and checked on numerous occasions by the customs authorities and it had not acted with obvious negligence.

- (11) Under Article 905 of Regulation (EEC) No 2454/93 and in support of the request made by the Dutch authorities, the applicant indicated that it had seen the dossier submitted to the Commission by the Dutch authorities and had nothing to add.
- (12) In accordance with Article 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 5 March 2003 within the framework of the Customs Code Committee (Section for Repayment) to consider the case.
- (13) Article 239 of Regulation (EEC) No 2913/92 allows import duties to be repaid or remitted in situations other than those referred to in Articles 236, 237 and 238 of that Regulation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.
- (14) The Court of Justice of the European Communities has consistently taken the view that these provisions represent a general principle of equity designed to cover a special situation in which an operator which would not otherwise have incurred the costs associated with post-clearance entry in the accounts of customs duties might find itself compared with other operators carrying out the same activity.
- (15) According to the dossier sent to the Commission on 20 January 2003, the competent authorities had specifically indicated the tariff classification to be used, i.e. 8428, as a result of examining the goods in 1989 and, on numerous occasions over a period of several years, had checked and approved customs declarations giving the classification now found to be incorrect for the goods concerned. In so doing, the competent authorities have committed an active error which constitutes a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.

- (16) Neither the applicant nor the client had any reason to doubt the accuracy of the tariff classification approved by the competent administration following the ruling adopted in 1989 as it was the result of an examination of the goods concerned and an investigation into the classification to be used. Furthermore, the fact that the competent customs authorities of different districts had repeatedly accepted the tariff classification declared without question over a period of several years only served to confirm the conviction of the client and the applicant that the classification was correct.
- (17) In the light of these considerations, obvious negligence cannot therefore be attributed to the applicant.
- (18) Remission of import duties is therefore justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of XXXXX requested by the Netherlands on 20 January 2003 is justified.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 11-4-2003

For the Commission

Frits Bolkestein

Member of the Commission