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COMMISSION DECISION
of 22.9.1993

finding that it is justified not to take action for
the post-clearance recovery
of import duties in a particular case

(request submitted by Germany)

REC 3/93

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 2164/91 of 23 July 1991 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 thereof,

Whereas by letter dated 31 March 1993 received by the Commission on 16 April 1993, Germany asked the Commission to decide under Article 5(2) of Regulation (EEC) No 1697/79 whether it is justified not to take action for the recovery of import duties 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 201, 24.7.1991, p.16.

For a number of years a German firm has imported dried fruit granules of Swiss origin. This product was declared under CN heading 21.06 N. This tariff classification was in accordance with binding tariff information (BTI) previously issued to the Swiss firm when it carried out the clearance formalities in its own right.

The same tariff heading was also given to the German firm by the German customs authorities and subsequently confirmed by laboratory analysis.

In its judgment of 18 April 1991 in Case 219/89 (Wesergold), the European Court of Justice ruled that such a product was to be classified in CN heading 20.09.

As this tariff heading was subject to a higher rate of customs duty than heading 21.06 N, post-clearance recovery in respect of imports up to 18 April 1991 of duty amounting to DM [REDACTED] was claimed from the importer.

The importer appealed against the recovery under Article 5(2) of Regulation (EEC) No 1697/79.

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 3 June 1993 within the framework of the Committee on Duty Free Arrangements to examine the case;

Whereas, in accordance with Article 5(2) of Regulation (EEC) No 1697/79, the competent authorities may refrain from taking action for the post-clearance recovery of import or export duties which were not collected as a result of an error made by the competent authorities themselves which could not reasonably have been detected by the person liable, the latter having for his part acted in good faith and observed all the provisions laid down by the rules in force as far as his customs declaration is concerned;

Whereas the product concerned has mistakenly been classified under the same tariff heading, 21.06 N, on several occasions and by different customs services;

Whereas the correct tariff classification was a matter of some difficulty which was only resolved in the light of the ruling given by the European Court of Justice in Case 219/89;

Whereas in such circumstances the error made and repeated by the customs authorities could not reasonably have been detected by the importer;

Whereas the person liable acted in good faith and observed all the provisions laid down by the rules in force as far as his customs declaration was concerned;

Whereas, therefore, it is justified not to take action for the post-clearance recovery of import duties in this case,

HAS ADOPTED THIS DECISION:

Article 1

The import duties in the sum of DM [REDACTED] which are the subject of the request by Germany received by the Commission on 31 March 1993 shall not be recovered.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 22.9.1993

For the Commission